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BACKGROUND MATERIALS RELATING TO THE UNITED STATES-SOVIET UNION COMMERCIAL AGREEMENTS

COMMITTEE ON FINANCE
UNITED STATES SENATE
RUSSELL B. LONG, *Chairman*

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BACKGROUND MATERIALS RELATING TO THE UNITED STATES-SOVIET UNION COMMERCIAL AGREEMENTS

Introduction

The period 1972–73 was marked by a series of interrelated agreements and arrangements to facilitate trade and restore normal commercial relations between the United States and the Union of Soviet Socialist Republics. The commercial agreements were the offspring of the "Basic Principles of Relations Between the United States and the Union of Soviet Socialist Republics," signed by President Nixon and Soviet General Secretary Brezhnev at the close of the May, 1972, Moscow Summit Meeting.[1] This staff document provides background information on six major commercial agreements concluded between the U.S. and U.S.S.R. during 1972 and 1973.

Postwar U.S. foreign economic policy had, until recently, sought to deny the Soviet Union the economic and technological benefits of trade with the West. For their part Soviet leaders also sought to minimize economic contacts with the non-communist world. As a result of these mutual, self-protecting policies, barriers were erected to restrain ormal economic relations between the two countries. Recent developments—including an improving political climate, continuing Soviet agricultural difficulties, the growing Sino-Soviet animosity, and enormous U.S. trade and payments deficits in 1971 and 1972—contributed to the effort toward commercial rapprochement. The Soviet role in the Vietnam peace negotiations may also have played a part in the normalization of commercial relations.

During the 1960's, the U.S. share of western trade with the Soviet Union was small. Our exports to the U.S.S.R. averaged $58.5 million, compared with $2.4 billion average annual exports from all non-communist countries. Over the same period, our imports from the Soviet Union averaged $34.7 million while non-communist countries as a group imported an average of $2.6 billion from the Soviet Union.

While U.S. trade with the Soviet Union remained small during the 1960's, total exports to the U.S.S.R. from non-communist countries rose from $1.7 billion in 1960 to $4.3 billion in 1971. In 1972, U.S. exports to the Soviet Union totaled $542.2 million; one year later, in 1973, U.S. exports had almost doubled to a level of $1.19 billion, largely because of the sale of grains to the Soviet Union during that year. Over the same period U.S. imports from the Soviet Union rose

[1] The Seventh Principle provided: "The United States of America and the Union of Soviet Socialist Republics regard commercial and economic ties as an important and necessary element in the strengthening of their bilateral relations and thus will actively promote the growth of such ties. They will facilitate cooperation between the relevant organizations and enterprises of the two countries and the conclusion of appropriate agreements and contracts, including long term ones."

from $95.5 million in 1972, to $214 million in 1973.

U.S. trade with communist countries as a whole has been disproportionately small compared to total U.S. trade. Trade with communist countries reached one percent of trade in 1972 despite the large grain shipments to the U.S.S.R. in that year.[2]

U.S. trade patterns with communist nations are shown in the following tables.

FREE WORLD TRADE WITH THE COMMUNIST COUNTRIES

[In millions of U.S. dollars]

	Free world [1]		United States [2]	
	Exports [3]	Imports [3]	Exports	Imports
1950	2,100	2,400	536	633
1951	2,300	2,600	551	528
1952	2,100	2,300	526	507
1953	1,900	2,300	438	477
1954	2,300	2,400	445	451
1955	2,600	3,000	470	487
1956	3,200	3,600	540	530
1957	3,800	4,000	714	547
1958	4,200	4,300	666	592
1959	4,300	4,400	531	563
1960	4,700	4,900	420	441
1961	4,700	4,700	147	120
1962	4,900	5,000	139	89
1963	5,400	5,800	203	85
1964	6,700	6,800	340	102
1965	7,300	7,700	140	142
1966	8,300	8,800	198	182
1967	8,500	8,900	195	180
1968	8,800	9,500	215	201
1969	10,100	10,400	249	198
1970	11,800	11,500	354	227
1971	12,500	12,800	384	229
1972	15,600	14,000	883	354
1973	(4)	(4)	2,487	584

[1] Exports are f.o.b. and imports, in general, are c.i.f.
[2] Exports and imports are f.o.b.
[3] Rounded to the nearest tenth billion.
[4] Not available.

Source: International Economic Report of the President, February 1974.

[2] Total U.S. exports in 1972 amounted to $49.7 billion, while U.S. exports to communist countries were only $879 million. Total U.S. imports in 1972 came to $55.6 billion, while imports from communist countries totaled only $354 million.

U.S. FOREIGN TRADE WITH EASTERN EUROPE, THE U.S.S.R., AND CHINA [1]

[In millions of U.S. dollars]

	U.S. exports			U.S. imports		
	Eastern Europe	U.S.S.R.	China	Eastern Europe	U.S.S.R.	China
1950	26.1	0.8	45.7	42.3	38.3	146.5
1951	2.8	.1	(2)	36.3	27.5	46.5
1952	1.1	(2)	0	22.8	16.8	27.7
1953	1.8	(2)	0	25.6	10.8	.6
1954	5.9	.2	(2)	30.5	11.9	.2
1955	6.5	.3	(2)	38.8	17.1	.2
1956	7.4	3.8	0	41.0	24.5	.2
1957	81.6	4.6	(2)	44.6	16.8	.1
1958	109.8	3.4	(2)	45.1	17.5	.2
1959	81.9	7.4	(2)	52.3	28.6	.2
1960	154.9	39.6	0	58.3	22.6	.3
1961	87.9	45.7	(2)	57.9	23.2	.4
1962	105.1	20.2	(2)	62.6	16.3	.2
1963	143.9	22.9	(2)	60.3	21.2	.3
1964	193.6	146.4	(2)	77.8	20.7	.5
1965	94.8	45.2	(2)	94.8	42.6	.5
1966	156.0	41.7	(2)	129.1	49.6	.1
1967	135.0	60.3	(2)	136.1	41.2	.2
1968	157.3	57.7	0	140.0	58.5	(2)
1969	143.7	105.5	0	144.0	51.5	(2)
1970	234.9	118.7	0	153.5	72.3	(2)
1971	222.2	162.0	0	165.8	57.2	4.9
1972	276.9	542.2	63.5	225.0	95.5	32.4
1973	607.0	1,190.0	690.0	305.0	214.0	64.0

[1] Exports and imports are f.o.b.
[2] Negligible.

Source: International Economic Report of the President, February 1974.

Against this background, this paper will briefly describe and discuss each of the Soviet-American commercial agreements in their chronological order.

Agreement to Establish a Joint U.S.-U.S.S.R. Commercial Commission, May 26, 1972

The first outgrowth of the Moscow Summit Meeting was the announcement, on May 26, 1972, that President Nixon and Soviet

General Secretary Brezhnev had agreed to establish a joint U.S.-U.S.S.R. Commercial Commission to serve as a vehicle for improving commercial relations (see Appendix A). The Commission was charged with the immediate responsibility of negotiating commercial agreements and with the long-term responsibility of monitoring Soviet-American commercial relations. Specifically, the Commission was to negotiate
—an overall trade agreement including reciprocal Most Favored Nation (MFN) treatment;
—arrangements for the reciprocal availability of government credits to finance bilateral trade;
—provisions for the reciprocal establishment of business facilities to promote trade;
—an agreement establishing an arbitration mechanism for settling commercial disputes.

In addition, the Commission was to study U.S.-U.S.S.R. participation in the development of resources and the sale of raw materials, while monitoring commercial relations between the two countries for the purpose of identifying and resolving issues as they arise.

The Commission was initially headed by Commerce Secretary Peter G. Peterson,[3] chairman of the American Section and by Soviet Trade Minister Nikolai S. Patolichev, chairman of the Soviet Section. The Commission divided itself into task forces and on August 1, 1972, announced the adoption of procedural rules governing its activities (see Appendix A–2).

The Grains Agreement, July 8, 1972

At the top of the Soviet Union's shopping list was its desire to purchase foreign grains to compensate for crop failures and to permit a five-year plan to increase protein in the Soviet diet. On July 8, 1972, only weeks after the Moscow Summit, the White House announced a three-year grain agreement (see Appendix B) in which the Soviet Union agreed to purchase, at a minimum, $750 million worth of U.S. grown grains (wheat, corn, barley, sorghum, rye, oats—at the Soviet Union's option) between August 1, 1972 and July 31, 1975, making it the largest Soviet grain purchase in history. Under the agreement, the purchases and sales were to be negotiated between the Soviet Union and private commercial exporters at U.S. market prices. As part of the agreement, the U.S. agreed to make available up to $500 million credit through the Commodity Credit Corporation (CCC) for repayment three years from the dates of deliveries. The credits on deliveries made through March 31, 1973 carried CCC's going interest rates (which were 6⅛ percent per annum on letters of credit issued by U.S. Banks and 7⅛ on letters of credit issued by foreign banks). Two previous

[3] Treasury Secretary George Shultz succeeded Mr. Peterson on March 6, 1973.

purchases of U.S. grains by the Soviet Union had been on a cash basis ($110 million of wheat in 1963 and $150 million of feed grains in 1971).

The grains transaction made the Soviet Union the second largest purchaser of U.S. grains, behind Japan which has averaged $437 million in purchases in each of the previous three years. The average purchase rate of $250 million each year would increase U.S. exports of the six grains by almost 17 percent annually over the 1969–71 average. At the time of the announcement, the Administration estimated that the purchase would generate a range of 22,500 to 37,500 man-years of work for U.S. workers and result in substantial savings in grain storage costs.

Missing from the terms of the grains agreement was any indication of the quantities of grain to be carried by U.S., Soviet, and third-party vessels. The 1963 wheat sale had been conditioned on the wheat being transported in available American ships supplemented by foreign vessels as required. The 1971 sale of feed grains had been made possible by American maritime unions agreeing to drop their demand that 50 percent of the shipments be transported in American flag vessels. The transportation arrangements for the 1972 sale were not made explicit until the Soviet-American Maritime Agreement was announced in October, 1972.

The grain sale to the Soviet Union for fiscal year 1973 amounted to approximately 19.2 million metric tons and for the most part was comprised of wheat with lesser amounts of corn, soybeans, barley and oats. U.S. wheat export sales in fiscal 1973 totaled approximately 1.1 billion bushels, the largest annual export in U.S. history. In July and August, 1972, sales to the U.S.S.R., totalling about 440 million bushels and valued at about $700 million, accounted for about 40 percent of the record exports.

Initial criticism of the grains agreement centered around reports that a team of Soviet grain buyers had been making purchases prior to the July 8, 1972, announcement and had quietly cornered one quarter of the U.S. wheat crop for 1972, reportedly at prices of about $1.63 a bushel. Following the announcement of the sale, the price of wheat in the U.S. market shot up from $1.68 per bushel in July, 1972, to $2.49 per bushel in September, 1972, to $5.69 per bushel in January 1974.

More recently, critics have focused on the effect of the grains sales on the domestic economy and food supply, charging that the sale of such a large portion of the 1972 grains crop has contributed to rising food prices. In addition, a report of the General Accounting Office, made public in July, 1973, found "weaknesses" in the Agricultural Department's management of the wheat export subsidy program and its payment of $300 million in subsidies to wheat exporters for sales abroad which could have been made even if the subsidies had been reduced or eliminated sooner than September, 1972, when subsidies were in fact terminated.

During fiscal year 1973, unprecedented port delays developed owing to the tremendous volume of U.S. grain exports. Responding to the delays, the Maritime Administration and Agriculture Department initiated policies to facilitate shipments.

The controversy surrounding the grains agreement was compounded by the Administration's decision, in June, 1973, to impose an immediate embargo on exports of soybeans, cotton seeds, and certain products from the two crops. According to newspaper reports, the Administration imposed the emergency embargoes when the Agriculture Department prepared a report showing that exporters, as of June 13, 1973 had sales contracts of more than 92 million bushels of soybeans during the rest of the 1972–73 marketing year, ending August 31, 1973. The planned exports were 6 percent higher than previous estimates for soybeans and 27 percent higher for soybean meal. Secretary Shultz informed the Finance Committee that the contracts exceeded the available supply. On June 13, 1973, the Administration asked Congress for more flexible statutory authority to impose export controls when needed to curtail domestic inflation and assure adequate domestic supplies of scarce commodities.

The imposition of export controls on soybeans, cotton seed, and their products, moreover, complicates the U.S. bargaining posture as it enters trade negotiations with its trading partners, many of whom relied to their detriment upon U.S. grain exports. However, as the shortages were worldwide other producing countries also established export controls. Indeed as of this writing (March 1974) the U.S. is the only major producer of wheat which does not have some form of export controls on that commodity.

The Maritime Agreement, October 14, 1972

The terms relating to transportation which had been missing in the grains agreement were covered in the three-year Maritime Agreement (See Appendix C) announced by the Administration in October 1972, and in subsequent arrangements of the parties.

The White House fact sheet attributed two objectives to the Maritime Agreement: "first, to open the channels of maritime commerce between the two nations by opening major U.S. and Soviet commercial ports to call by specified kinds of U.S.-flag and Soviet-flag vessels, and secondly to afford to U.S.-flag vessels and Soviet-flag vessels the opportunity to participate equally and substantially in the carriage of all cargoes moving by sea between the two nations."

The agreement provides merchant flag vessels of the two countries reciprocal access to forty Soviet and forty U.S. ports specified in the agreement, provided notice is given appropriate authorities four days in advance. The four-day notice requirement is considerably more than the 24-hour notice period usually applied to merchant vessels,

yet it is an improvement on the 14-day advance *request* (emphasis added) requirement now applied by both the U.S. and the Soviet Union. Soviet and American merchant vessels may enter ports not specified in the agreement, but only in accordance with prior rules, including the 14-day advance *request* requirement.

The agreement applies to flag vessels engaged in commercial maritime shipping and merchant marine training. Training vessels and hydrographic and other research vessels may enter ports only for purposes of resupply, rest, crew changes, minor repairs and other normal port services. The agreement does not cover vessels engaged in fishing or related activities, nor does it include warships. The Maritime Agreement is not intended to cover any liquefied natural gas (LNG) trade between the countries. The agreement does not alter present U.S. policies respecting ships which have called on Cuban, North Vietnamese, or North Korean ports. Soviet vessels which have called or will call on any of the three countries will not be permitted to bunker in U.S. ports and Soviet vessels which have called on Cuba or North Vietnam will not be permitted to load or unload in U.S. ports government-financed cargoes such as grains sold on Commodity Credit Corporation credit.

Under the agreement, neither nation can charge vessels of the other tonnage duties which exceed duties charged to vessels of other nations in like situations.

As a means of attaining the second objective—equal and substantial opportunity in the carriage of cargo—the agreement declares the intention of both parties that the national flag vessels of each country will carry equal and substantial shares of the ocean-borne commerce between the two nations. At the same time the agreement recognizes the policies of both the United States and the Soviet Union regarding participation in its trade by third-flag vessels. The intention that a substantial share of Soviet-American trade will be carried by each nation's flag vessels is defined as meaning that the Soviet and American merchant fleets will have the opportunity to carry not less than one-third of all maritime cargoes moving in whole or in part between the two countries, either directly or via third countries. In the case of grain shipments, the one-third requirement will be applied retroactively to all shipments since July 1, 1972. Equal share of the trade between the two nations is measured on the basis of U.S. dollar freight value of cargo carryings by the national-flag vessels of each party during each calendar year accounting period. Special accounting procedures are established to determine on a uniform basis the U.S. dollar freight value of cargo carryings and to permit continuous monitoring to maintain parity of carriage during the accounting period, while permitting minor variances caused by the availability of vessels.

The terms of the Maritime Agreement provided a series of phases concerning maritime freight rates. International bulk cargoes are shipped under charter rates which are set in competition with ships of nations with far lower costs than American ships. Under the agreement, the parties worked out rate provisions for bulk cargoes to be carried by U.S. vessels. For agricultural cargoes, the Soviet Union agreed to terms relating to the cost of unloading ships in Soviet ports which were more favorable than ordinarily applies to U.S. ships. The original provisions for rates on agricultural cargoes expired on June 30, 1973. Renegotiated terms provided U.S. operators with more attractive rates schedules and other incentives to increase their participation, including a monthly index system reflecting current market conditions, increase in demurrage rates (penalties paid Soviet charterers to shipowners for port delays) for U.S. ships, and an increase in the salt water draft guaranteed by the Soviets from 32 to 34 feet. The latter represents a significant savings to operators of larger U.S. ships in reduced lighterage costs ranging from $5,600 to $17,000 per voyage.

The Grains and Maritime Agreements have substantially benefited the bulk cargo segment of the U.S. merchant marine. In April, 1972, before either agreement had been signed, 43 ships were laid up for lack of employment. A year later virtually no ships were laid up for lack of employment for the first time in several years.[4]

The Trade Agreement and Lend-Lease Settlement, October 18, 1972

At the center of the Soviet-American commercial agreements were the interrelated Lend-Lease Settlement (see Appendix D) and Trade Agreement (see Appendix E) jointly announced on October 18, 1972. The purposes of the settlement and agreement were to remove the single largest obstacle to normal commercial relations and to provide a clear framework to facilitate trade between the two countries.

The Lend-Lease Settlement

American participation in East-West trade has been significantly limited by business, economic, and political factors. In the political sphere, the largest obstacle to Soviet-American trade has been unsettled Soviet debts arising from U.S. Lend-Lease assistance during World War II. Under the Lend-Lease Act of March 11, 1941, the U.S. provided assistance to its Allies for the prosecution of World War II. The assistance was in the form of both military and civilian goods and services, with Great Britain receiving the largest share ($21.5 billion) and the Soviet Union by far the second largest share ($11.1 billion). Following the war the U.S. did not seek repayment for military assistance; it sought repayment only for civilian goods in possession

[4] See Soviet Economic Prospects for the Seventies, A Compendium of Papers submitted to the Joint Economic Committee, June, 1973, pages 647-49.

of the recipient country at the close of hostilities. Great Britain settled its debt in 1945, agreeing to pay the U.S. $895 million, with a five-year grace period and with the final payment due on December 31, 2005 (or December 31, 2008 if three allowed deferments are taken).

Negotiations with the Soviet Union following the war were stymied with the U.S. seeking approximately $2.6 billion and the Soviet Union willing to pay considerably less. The Soviets took the view that Lend-Lease was not a conventional debt and that the assistance was the U.S. contribution to the war effort. In an agreement signed in October 1945, the Soviet Union agreed to pay for "pipeline" deliveries (deliveries requisitioned or en route at the close of the war) which ultimately totalled $225.5 million in 22 annual payments at an interest rate of 2⅜ percent per annum. The Soviet Union has been making payments on the "pipeline" account since 1954, making deductions (unrecognized by the U.S.) for damages allegedly resulting from non-delivery and for damages to Soviet ships in Haiphong during the Vietnam War.

Negotiations over the Lend-Lease debt broke down in 1952 with the U.S. seeking $800 million and the Soviets offering $300 million. Negotiations were resumed eight years later but again reached the same deadlock. The principal issues throughout the negotiations were the amount of the total settlement, whether and how much interest should be charged, the length of time for repayment, a grace period, and the right to defer payments under certain conditions. In later years negotiations were complicated by the length of time since World War II, the differential between current interest rates and those prevailing in 1945, and a problem created by the higher tariffs imposed on Soviet products than those on British products during the intervening years.

The lend lease statute granted the Executive wide discretion in settling lend lease debts. The prospect of better relations between the two countries—and particularly the Soviet Union's desire for most-favored-nation (MFN) treatment—led the U.S. and the Soviet Union to resume negotiations over the lend lease debt in August, 1971. The settlement announced on October 18, 1972, resulted from those negotiations.

Under the Lend-Lease Settlement, the Soviets will pay to the U.S. an amount of at least $722 million over the period ending July 1, 2001. Initial installments were to be as follows: $12 million on October 18, 1972; $24 million on July 1, 1973, and $12 million on July 1, 1975. The balance is conditional on most favored nation treatment and is to be paid in equal annual installments ($24 million for each of 28 installments assuming the first such annual payment is on July, 1974) ending on July 1, 2001. The exact total amount will depend upon

when and how many of the four allowable deferments are taken by the Soviets. If they were to take their four postponements early in the period, interest on the deferments could total $37 million making the total settlement amount to be paid approximately $759 million. Such deferments, if taken, will nonetheless be repaid by July 1, 2001, and will bear interest at the rate of three percent per annum. The British pay 2 percent interest on any deferments and are permitted to add a year beyond 2000 for each deferment.

Beyond the initial Soviet payments of $48 million by mid-1975, the payments schedule is triggered by Congress granting Soviet Union MFN treatment. If MFN is granted between June 1 and December 1, the first lend lease payment is due thirty days later. If MFN is granted from December 2 through May 31 of the following year, the first lend lease payment becomes due on July 1 of that year. Without MFN, the Soviet Union is scheduled to pay only $48 million, with the schedule for remaining payments uncertain.

The following table compares the terms of the British and Soviet settlements:

	Great Britain	U.S.S.R.
Total aid extended	$21,500,000,000	$11,100,000,000.
Total amount to be paid.	895,000,000 [1]	921,000,000. [1]
Grace period	5 years	None.
Final due date	Not before Dec. 31, 2005, but no later than Dec. 31, 2008.	July 1, 2001.
Annual deferments allowed.	7; each deferment extends final due date.	4; no extensions.
Interest rate on deferments.	2 percent	3 percent.

[1] Assumes no deferments are taken and includes payments for goods in the "pipeline" at the end of World War II (the Soviet Union has made $199,000,000 in pipeline payments since 1954).

Source: U.S. Department of Commerce.

The Soviet Union does not honor World War I debts incurred by the pre-Bolshevik Russian government. The Johnson Debt Default Act of 1934 (18 U.S.C. 955) as amended bars *private* loans or bond transactions with a foreign government which is in default on its obligations to the U.S. (unless the country is a member of the International Monetary Fund and the International Bank for Reconstruction and Development). The Johnson Act, however, does not apply to persons acting for, or participating with, the Eximbank in any transaction in which the Eximbank is engaged.

The Administration's original trade bill (H.R. 6767) included a provision authorizing repeal of the Johnson Act. This provision was not included in H.R. 10710, the Trade Reform Act of 1973, as passed by the House of Representatives.

In addition, Section 403 of H.R. 10710 provides that nondiscriminatory treatment with respect to any country which had entered into an agreement with the U.S. concerning the settlement of lend lease debts would be limited to periods in which the country was not in arrears on its obligations under the agreement.

Between October 18, 1972, when the Export-Import Bank (Eximbank) began issuing credits for Soviet projects, and February 28, 1974, the bank approved loans to the Soviets totalling $248.5 million. Of this amount, $128.8 million was lent following adoption by the House of Representatives on December 11, 1973, of the Vanik-Jackson Amendment (which would bar such credits). As of February 28, 1974 pending credit applications by the Soviet Union totalled an additional $221 million. (See Appendix F–1.)

On March 11, 1974, the Eximbank board suspended processing of all new loans and credit guarantees for the Soviet Union as well as Poland, Romania, and Yugoslavia. The suspension was made in response to a legal memorandum prepared by the General Accounting Office (GAO) for Senator Richard Schweiker. The GAO memorandum interpreted Section (2)(b)(2) of the Export-Import Bank Act of 1945 as requiring the President to make individual determinations of national interest for each Eximbank transaction involving a communist country, rather than a general determination for each country, as was attempted in the President's determination of October 18, 1972, and prior determinations. Subsequent memoranda by general counsel of the Eximbank and the Attorney General of the United States took a contrary view, and the Eximbank resumed issuing credits. See Appendixes F2–F4.

THE TRADE AGREEMENT

The Soviet Union agreed to settle its lend-lease debt in a *quid pro quo* exchange for the U.S. granting MFN treatment for Soviet products. If the Congress does not enact legislation granting MFN, the three-year Trade Agreement will not go into effect and the Soviet obligation under the lend-lease settlement will be substantially reduced. MFN is, therefore, the key element of the Trade Agreement announced on October 18, 1972.

The objective of the Trade Agreement, according to the White House Fact Sheet, is to create "a comprehensive and clear framework within which private American firms can participate in U.S.-Soviet trade." To facilitate such trade, the agreement includes the following major provisions:

Article 1: each government is to accord unconditional MFN treatment to the other in tariffs, taxation, regulations and other matters relating to trade;

Article 2: each government is to encourage trade between the two countries with the expectation that over the three-year period of the agreement bilateral trade will at least triple the 1969–71 level (which amounted to approximately $525 million); the U.S.S.R. is to place substantial orders for U.S. machinery, plants and equipment, agricultural products, industrial products, and consumer goods;

Article 3: each government may take steps to protect against disruption of its domestic markets by products imported from the other country;

Article 4: all currency payments between U.S. persons and Soviet trading organizations are to be made either in U.S. dollars or other freely convertible currencies mutually agreed upon by such persons and organizations;

Article 5: provides for establishment of a U.S. Commercial office in Moscow and a Soviet Trade Representation in Washington with full diplomatic immunity but without affecting the right of persons in the U.S. and foreign trade organizations in the Soviet Union to maintain direct relations relating to commercial transactions;

Article 6: provides for the availability of U.S. business facilities in the U.S.S.R. equivalent to those granted businessmen of other nations and for the availability of appropriate facilities in the United States for Soviet foreign trade and other organizations; with a waiver on the part of both governments of the right of their citizens and foreign trade organizations to claim immunity from suits with respect to commercial transactions;

Article 7: both governments are to encourage arbitration of commercial disputes under the Arbitration Rules of the Economic Commission for Europe in a third country; both governments are to insure that their courts are available to foreign trade corporations and organizations, whether for defending or bringing actions, to the extent enjoyed by similar entities of third countries;

Article 8: no provision of the agreement is to limit the right of either government to take action for the protection of its security interests;

Article 9: the agreement is to enter into force upon exchange of written notices of acceptance and to remain in force for three years unless extended by mutual agreements; the Joint U.S.-U.S.S.R. Commercial Commission is to oversee and facilitate the implementation of the agreement and to negotiate either an extension or successor to the agreement prior to its expiration.

The Trade Agreement and related annexes were signed in Washington on October 18, 1972, by then Commerce Secretary Peter G. Peterson and Soviet Minister of Foreign Trade N. S. Patolichev. On the same date, President Nixon made a determination of national interest to permit the Eximbank to issue credits to the Soviet Union, as the U.S. half of a reciprocal credit agreement.[6]

The most important elements of the Trade Agreement are the provisions relating to (1) reciprocal, unconditional MFN, (2) protection against market disruption, (3) expanded commercial facilities for both government and private organizations, and (4) the resolution of commercial disputes through arbitration. Following is a background discussion of these provisions:

Most Favored Nation Treatment (MFN)

Article 1 proposes a reciprocal exchange of MFN treatment in all matters relating to customs duties and charges, and is the only portion of the Trade Agreement requiring Congressional approval or authority. The Administration's Trade Reform Act of 1973 (H.R. 6767) submitted to the Congress on April 10, 1973, contained provisions which would authorize the President (a) to enter into bilateral commercial arrangements to extend MFN treatment to countries presently subject to higher (Column 2) tariff rates and (b) extend MFN treatment to countries which become a party to a multilateral agreement to which the United States is also a party.

The U.S. presently imposes the Column 2 rates on the products of all Communist countries other than Poland and Yugoslavia. Products of those two countries are presently assessed at MFN rates. Many Eastern European countries have expressed interest in joining the GATT, a multilateral agreement which would qualify them for MFN treatment under the Administration's original trade bill. Poland acceded to the GATT in 1967, Romania in 1971, and Hungary is presently negotiating to join. The accession of Poland posed no problem for the U.S., as MFN treatment was already authorized for Polish exports to the U.S. The accession of Romania, however, forced the U.S. (which was unable under its own laws to grant MFN to Romanian products) to invoke Article XXXV of the GATT which permits a GATT member to declare that it does not consent to application of GATT provisions to another country at the time of its accession. If Hungary becomes a party to the GATT, the U.S. will again be required to invoke Article XXXV unless Congress has authorized extension of MFN to Communist countries, as is presently the case for all free world countries.

[6] The validity of this Presidential Proclamation has been challenged by the GAO. See Appendix F-2.

The Soviet Union maintains a two-column tariff schedule while also extending preferential treatment to developing countries. The U.S. is one of the few countries to which the higher, non-MFN Soviet tariff is applied. The extension of MFN by the Soviet Union, however, is not of the same value as the extension of MFN by the U.S. to Soviet products. A state-trading country receiving MFN from a market economy country obtains the same advantages as another market economy country receiving MFN. But a market economy country receiving MFN from a state trading economy is still dependent on central planning agency approval of its imports. In the case of tariffs, for example, the state trading government essentially both pays the duty through its state trading corporation and also collects it through its customs. The reduction in tariffs from the granting of MFN by a state-run economy does not ordinarily make goods from a market economy any more saleable in the state trading country. The basic objective of a market economy in exchanging MFN with a state trading economy is to assure an adequate opportunity to sell in the state economy.

The exchange of MFN between the Soviet Union and the U.S. is of particular relevance to the growing number of U.S. companies seeking to do business in the Soviet Union and especially to companies seeking to sell Soviet products in the U.S. markets. On April 19, 1973, Pepsico signed a five-year contract in Moscow permitting it to construct a bottling plant and to market Pepsi Cola in the Soviet Union to the extent that it sells Stolichnaya vodka in the U.S. Pepsi Cola has exclusive rights over the distribution of the vodka in the U.S. market, and Coca Cola cannot franchise its product in the Soviet Union. It is a classic barter type transaction which typifies state trading. MFN treatment for Soviet products would make a Russian vodka more competitive in the U.S. market by reducing its retail cost from about $8.50 to about $6.50. It will also increase the profits of the American Corporation—Pepsico—which has sole rights of distribution of the Soviet vodka as well as a corner on the Soviet soft drink market.

Other American corporations have signed similar barter agreements with the Soviet Union. Occidental Petroleum has signed an agreement to exchange $4 billion worth of chemical fertilizer for Soviet raw materials—possibly the largest agreement in history between a capitalist corporation and the Soviet Union. Bechtel Corporation will build four fertilizer plants under a contract with Occidental. Other U.S. companies seeking to do business in the Soviet Union include: Control Data Corporation, Holiday Inns, Tenneco, and McNeil Corporation. U.S. companies doing business with the Soviet Union through foreign subsidiaries and affiliates include: Wean United, Inc., and I. U. International Corporation.

Market Disruption

Article 3 of the Trade Agreement provides that each government may take appropriate steps to insure that the importation of products originating in the other country does not threaten or contribute to the disruption of domestic markets. Annex 1 to the Agreement sets forth consultation procedures to be followed in protection of domestic markets and represents a concession on the part of the Soviet Union to honor the U.S. request to limit Soviet exports to the U.S. markets.

Special problems are created when a market economy attempts to apply anti-dumping and countervailing duty principles to a state trading economy. In a state trading economy, prices are not set in a free market, and it is often difficult to determine whether exported goods are being dumped at less than fair value. Article 3 and Annex 1 set forth the procedures and rules for protection of domestic markets.[6]

Expanded Commercial Facilities for Government and Private Organizations

Article 5 permits commercial agencies of both countries to establish adequate representation facilities in the other country's capital. Article 6 permits private companies and trading organizations to establish offices in the Soviet Union and the U.S. Under present Soviet regulations, U.S. companies may not establish permanent offices in Moscow or hire local personnel without accreditation by the Soviet Government. Until recently, only two American firms, Pan American and American Express, were accredited. Since trade negotiations were commenced, Pullman, Inc., Occidental Petroleum, and Chase Manhattan Bank have also been accredited. Under Article 6, the Soviet Union has agreed that they will accredit U.S. firms under conditions no less favorable than those accorded firms of any third country. Accredited companies will be permitted to employ local personnel and facilities, including local housing, necessary to conduct their operations. To comply with Article 6, the Soviet Union has promised to construct a large international trade center to provide office and living space for the personnel of 400 to 500 firms. Intourist, the Soviet tourist agency, Amtorg, the representative Soviet trade organizations, and the Kama River Purchasing Organization already have offices in the U.S. Under Article 6, it can be anticipated that Soviet commercial offices in the U.S. will be expanded.

The Resolution of Commercial Disputes

Article 5 provides that the establishment of a U.S. Commercial Office in Moscow and a Soviet Trade Representation in Washington

[6] This provision of the Trade Agreement would be made statutory by section 405 of H.R. 10710.

shall not affect the rights of persons in the U.S. and foreign trade organizations in the Soviet Union to deal directly with each other in negotiating commercial transactions. Article 6 provides that either U.S. persons, either individuals or corporations, and Soviet trade organizations shall not claim immunity from suit usually accorded diplomatic representatives. Moreover, U.S. corporations and Soviet foreign trade organizations are deemed as having legal existence in the other country. Article 7 provides that U.S. corporations and Soviet foreign trade organizations shall have access to the other country's courts. In addition, Article 7 makes it the policy of both governments to encourage the resolution of commercial disputes through arbitration under the Arbitration Rules of Economic Commission for Europe, a United Nations agency, in a third country. Parties to contracts, however, are free to decide on any other means of arbitration, in addition to their right to use the courts of each country.

The Transportation Agreement, June 19, 1973

On June 19, 1973, during the visit of Soviet Premier Brezhnev, Soviet Foreign Minister Andrei A. Gromyko and Secretary of State William P. Rogers signed a five-year agreement (see appendix G) to cooperate in the field of transportation. The agreement calls for an exchange of transportation specialists and technology and the creation of a joint commission on transportation. A separate agreement authorizes the expansion of air travel service between the two countries, including Aeroflot service to Washington Dulles Airport.

The Income Tax Convention, June 20, 1973

The following day, Soviet Trade Minister Nikolai Patolichev and Treasury Secretary George Shultz signed a convention (see Appendix H) to eliminate tax barriers to trade between the two countries. The convention deals with taxes at the federal level in the case the U.S. and with All-Union taxes in the case of the Soviet Union, and is intended to avoid double taxation of parties engaging in trade between the two countries. The convention is similar to tax agreements the United States has with other trade partners. As of March, 1974, the tax convention had not been ratified by the Senate.

Eleven bilateral agreements were signed by the United States and the Soviet Union during the June, 1973, visit of Soviet Premier Brezhnev to this country (the "second summit") including the transportation and air services agreements and the income tax convention described in this pamphlet. Also signed during the Brezhnev visit, were executive agreements relating to agriculture, oceanography, cultural exchanges, scientific cooperation, the principles of negotiation

on the limitation of strategic arms, the prevention of nuclear war, and a protocol relating to the possibility of creating a U.S.-U.S.S.R. Chamber of Commerce. The MFN provision of the Trade Agreement of October, 1972, and the Income Tax Convention of June, 1973, are the only provisions of the commercial agreements requiring Congressional authority or Senate ratification (respectively).

APPENDIX A-1

Agreement on the Establishment of the Joint U.S.-U.S.S.R. Commercial Commission

COMMUNIQUE OF MAY 26, 1972

In order to promote the development of mutually beneficial commercial relations and related economic matters between the two countries, Soviet leaders and the President of the United States Richard M. Nixon have agreed to establish a U.S.-U.S.S.R. Commercial Commission.

The U.S.-U.S.S.R. Commission is to:

Negotiate:

—an overall trade agreement including reciprocal Most Favored Nation (MFN) treatment;

—arrangements for the reciprocal availability of government credits;

—provisions for the reciprocal establishment of business facilities to promote trade;

—an agreement establishing an arbitration mechanism for settling commercial disputes.

Study possible U.S.-U.S.S.R. participation in the development of resources and the manufacture and sale of raw materials and other products.

Monitor the spectrum of U.S.-U.S.S.R. commercial relations, identifying and, when possible, resolving issues that may be of interest to both parties such as patents and licensing.

Sessions of the Commission will be held alternately in Moscow and Washington. The first session of the Commission is to take place in Moscow in July of this year.

[From *Weekly Compilation of Presidential Documents* (June 5, 1972, p. 924)].

APPENDIX A-2

Terms of Reference and Rules of Procedure of the Joint U.S.-U.S.S.R. Commercial Commission[1]

1. The Joint U.S.-U.S.S.R. Commercial Commission, established by the President of the United States of America and the Soviet leaders during their meetings in Moscow in May, 1972, is to promote the development of mutually beneficial commercial relations and related economic matters, and to work out specific arrangements between the United States of America and the Union of Soviet Socialist Republics.

2. The Commission is to negotiate:

—an overall trade agreement including reciprocal MFN treatment;
—arrangements for the reciprocal availability of government credits;
—provisions for the reciprocal establishment of business facilities to promote trade;
—an agreement establishing an arbitration mechanism for settling commercial disputes.

3. In addition, the Commission is to:

—study possible U.S.-U.S.S.R. participation in the development of natural resources and the manufacture and sale of raw materials and other products;
—monitor the spectrum of U.S.-U.S.S.R. commerical and economic relations, identifying and, when possible, resolving issues that may be of interest to both Parties.

4. The Commission consists of an American Section and a Soviet Section. The Parties shall advise each other in advance of the persons designated by them to participate at any meeting of the Commission.

5. The Commission shall hold meetings as mutually agreed by the Parties, but not less than once a year; alternately in Washington and Moscow. The Chairman of the Section of the host country shall preside over meetings of the Commission. Each Section may invite advisers and experts to participate at any meeting of the Commission.

6. The Parties shall, not later than one month prior to any meeting of the Commission, agree on an agenda for the meeting. The meeting shall consider matters included in this agenda, as well as further matters which may be added to the agenda by mutual agreement.

7. In order to fulfill its task the Commission may establish Joint Working Groups to consider specific matters. The Commission shall determine the assignments of such Joint Working Groups, which shall conduct their work in accordance with the instructions of the Commission.

[1] Source: U.S. Department of Commerce.

8. The Commission shall work on the basis of the principles of mutual agreement. On matters as to which either Party advises that further approval of its Government is required, such Party shall inform the other Party when such approval has been obtained.

9. Any document mutually agreed upon during the work of the Commission shall be in the English and Russian languages, each language being equally authentic.

10. Each Section shall have an Executive Secretary who shall arrange the work of the respective Section of the Commission, co-ordinate the activities of the Joint Working Groups and perform other tasks of an organizational and administrative nature connected with the meetings of the Commission. The Executive Secretaries shall communicate with each other as necessary to perform their functions.

11. Expenses incidental to the meetings of the Commission and any Joint Working Group established by the Commission shall be borne by the host country. Travel expenses from one country to the other, as well as the living and other personal expenses, of its representatives participating in the meetings of the Commission and any Joint Working Group established by the Commission shall be borne by the Party which sends such persons to represent it at such meetings.

Moscow, August 1, 1972

NIKOLAI S. PATOLICHEV,
Chairman, Soviet Section,
Joint U.S.-U.S.S.R. Commercial Commission.

PETER G. PETERSON,
Chairman, American Section,
Joint U.S.-U.S.S.R. Commercial Commission.

APPENDIX B

Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics With Respect to Purchases of Grains by the Soviet Union in the United States and Credit To Be Made by the United States [1]

The Government of the United States of America (USA) and the Government of the Union of Soviet Socialist Republics (USSR) have agreed as follows:

Article 1

1. The Government of the USA through its Commodity Credit Corporation's Export Credit Sales Program hereby makes available a total amount of US $750 million credit for financing the payment for USA grown grains (at buyer's option—wheat, corn, barley, sorghum, rye, oats) purchased by the USSR in the USA under this Agreement. Such total amount may be increased by the USA.

2. The USSR through its foreign trade organizations shall purchase from private United States exporters not less than US $750 million port value of such grains (at buyer's option—wheat, corn, barley, sorghum, rye, oats) for delivery during the three-year period August 1, 1972, through July 31, 1975, and of such amount not less than US $200 million shall be purchased for delivery prior to August 1, 1973. In case of purchases of such grains for cash for delivery during the period of August 1, 1972, through July 31, 1975, the U.S. dollar amount of such purchases shall be counted as if they were made on credit terms under this Agreement.

3. The following provisions shall apply with respect to the credit referred to in Section 1 of this Article 1.

3.1 It shall continue to be available, if not previously exhausted, for deliveries made not later than July 31, 1975.

3.2 The total amount of credit outstanding at one time shall not exceed US $500 million.

3.3 Delivery for purchases shall be F.A.S. or F.O.B. port of export and interest shall run from date of delivery. The date of delivery shall be the on-board date of the ocean bill of lading.

3.4 The principal and interest for credit arising under each delivery shall be payable by the USSR as follows: one-third of the principal annually, plus accrued interest on the outstanding principal balance to the date of each principal payment.

3.5 The amount of credit for each delivery will be limited to the United States port value of the commodity, without ocean freight, insurance, or other charges or costs.

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[1] Source: U.S. Department of Commerce.

3.6 The interest rate for purchases under this Agreement for which delivery is made not later than March 31, 1973, shall be 6⅛% per annum on that portion of the obligation confirmed by a USA bank. This rate of interest for that portion of the obligation confirmed by a USA bank shall be applicable during the whole three-year period for repayment of the credit which arises under each delivery made not later than March 31, 1973.

Article 2

This Agreement shall enter into force from the day of its signing and shall remain valid until all the obligations arising from it for both sides are fulfilled.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Agreement.

DONE at Washington this 8th day of July 1972 in duplicate, in the English and Russian languages, each text equally authentic.

M. KUZMIN
(For the Government of the Union of Soviet Socialist Republics).

PETER G. PETERSON,
EARL L. BUTZ
(For the Government of the United States of America).

APPENDIX B-1[1]

Exchange of Letters

WASHINGTON, D.C., *July 8, 1972.*

The Honorable M. R. KUZMIN,
Head of the USSR Government Delegation, Washington, D.C.

DEAR MR. FIRST DEPUTY MINISTER: In connection with signing today of the Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics with respect to purchases of Grains by the Soviet Union in the United States and Credit to be made available by the United States, we have the honor to confirm the understanding on interpretation between us that:

1. As to matters not covered in the above Agreement, the credits for grain purchases under the Export Credit Sales Program shall be governed by the "Regulations Covering Export Financing of Sales of Agricultural Commodities under the Commodity Credit Corporation Export Credit Sales Program (GSM-4)" effective in the USA on the day of signing this Agreement.

2. Grains purchased under the above Agreement shall be consumed primarily in the USSR. However, the USSR shall have the right to divert some portion of the grain for consumption in European countries presently full members of the Council for Mutual Economic Assistance.

Please accept, Mr. First Deputy Minister, the assurances of our highest consideration.

PETER G. PETERSON,
EARL L. BUTZ,
Heads of the USA Government Delegation.

Translation

MINISTRY OF FOREIGN TRADE,
U.S.S.R.
WASHINGTON, D.C., *July 8, 1972.*

Hon. PETER G. PETERSON,
Hon. EARL L. BUTZ,
Heads of the U.S. Government Delegation, Washington, D.C.

DEAR SIRS: In connection with the signing today of the Agreement between the Government of the Union of Soviet Socialist Republics and the Government of the United States of America with respect to purchases of grains by the Soviet Union in the United States and credit to be made available by the United States, I have the honor to confirm the understanding on interpretation reached between us that:

1. As to matters not covered in the above Agreement, the credits for grain purchases under the Export Credit Sales Program will be

[1] Source: U.S. Department of Commerce.

governed by the "Regulations Covering Export Financing of Sales of Agricultural Commodities under the Commodity Credit Corporation Export Credit Sales Program (GSM-4)" effective in the USA on the day of signing this Agreement.

2. Grains purchased under the above Agreement will be consumed primarily in the USSR. However, the USSR will have the right to divert some portion of the grain for consumption in European countries presently full members of the Council for Mutual Economic assistance.

Accept, Sirs, the assurances of my highest consideration.

M. KUZMIN,
Head of the USSR Government Delegation.

APPENDIX C

Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding Certain Maritime Matters[1]

The Government of the United States of America and the Government of the Union of Soviet Socialist Republics;

Being desirous of improving maritime relations between the United States and the Soviet Union, particularly through arrangements regarding port access and cargo carriage by sea; and

Acting in accordance with Article Seven of the Basic Principles of Relations Between the United States of America and the Union of Soviet Socialist Republics, signed in Moscow on May 29, 1972,

Have agreed as follows:

Article 1

For purposes of this Agreement:

(*a*) "Vessel" means a vessel sailing under the flag of a Party, registered in the territory of that Party, or which is an unregistered vessel belonging to the Government of such Party, and which is used for:

(i) Commercial maritime shipping, or

(ii) Merchant marine training purposes, or

(iii) Hydrographic, oceanographic, meteorological, or terrestrial magnetic field research for civil application.

(*b*) "Vessel" does not include:

(i) Warships as defined in the 1958 Geneva Convention on the High Seas;

(ii) Vessels carrying out any form of state function except for those mentioned under paragraph a of this Article.

Article 2

This Agreement does not apply to or affect the rights of fishing vessels, fishery research vessels, or fishery support vessels. This Agreement does not affect existing arrangements with respect to such vessels.

Article 3

The ports on the attached lists of ports of each Party (Annexes I and II, which are a part of this Agreement) are open to access by all vessels of the other Party.

Article 4

Entry of all vessels of one Party into such ports of the other party shall be permitted subject to four days' advance notice of the planned entry to the appropriate authority.

[1] Source: U.S. Department of Commerce.

Article 5

Entry of all vessels referred to in subparagraphs a(ii) and a(iii) of Article 1 into the ports referred to in Article 3 will be to replenish ships' stores or fresh water, obtain bunkers, provide rest for or make changes in the personnel of such vessels, and obtain minor repairs and other services normally provided in such ports, all in accordance with applicable rules and regulations.

Article 6

Each Party undertakes to ensure that tonnage duties upon vessels of the other Party will not exceed the charges imposed in like situations with respect to vessels of any other country.

Article 7

While recognizing the policy of each Party concerning participation of third flags in its trade, each Party also recognizes the interest of the other in carrying a substantial part of its foreign trade in vessels of its own registry, and thus both Parties intend that their national flag vessels will each carry equal and substantial shares of the trade between the two nations in accordance with Annex III which is a part of this Agreement.

Article 8

Each Party agrees that, where it controls the selection of the carrier of its export and import cargoes, it will provide to vessels under the flag of the other Party participation equal to that of vessels under its own flag in accordance with the agreement in Annex III.

Article 9

The Parties shall enter into consultations within fourteen days from the date a request for consultation is received from either Party regarding any matter involving the application, interpretation, implementation, amendment, or renewal of this Agreement.

Article 10

This Agreement shall enter into force on January 1, 1973; provided that this date may be accelerated by mutual agreement of the Parties. The Agreement will remain in force for the period ending December 31, 1975, provided that the Agreement may be terminated by either Party. The termination shall be effective ninety days after the date on which written notice of termination has been received.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington this 14th day of October 1972, in duplicate in the English and Russian languages, both equally authentic.

PETER G. PETERSON,
Secretary of Commerce
(For the Government of the United States of America).

TIMOFEY B. GUZHENKO,
Minister of Merchant Marine
(For the Government of the Union of Soviet Socialist Republics).

Annex I

PORTS OF THE UNITED STATES OF AMERICA OPEN TO CALLS UPON NOTICE

1. Skagway, Alaska
2. Seattle, Washington
3. Longview, Washington
4. Corpus Christi, Texas
5. Port Arthur, Texas
6. Bellingham, Washington
7. Everett, Washington
8. Olympia, Washington
9. Tacoma, Washington
10. Coos Bay (including North Bend), Oregon
11. Portland (including Vancouver, Washington), Oregon
12. Astoria, Oregon
13. Sacramento, California
14. San Francisco (including Alameda, Oakland, Berkeley, Richmond), California
15. Long Beach, California
16. Los Angeles (including San Pedro, Wilmington, Terminal Island), California
17. Eureka, California
18. Honolulu, Hawaii
19. Galveston/Texas City, Texas
20. Burnside, Louisiana
21. New Orleans, Louisiana
22. Baton Rouge, Louisiana
23. Mobile, Alabama
24. Tampa, Florida
25. Houston, Texas
26. Beaumont, Texas
27. Brownsville, Texas
28. Ponce, Puerto Rico
29. New York (New York and New Jersey parts of the Port of New York Authority), New York
30. Philadelphia, Pennsylvania (including Camden, New Jersey)
31. Baltimore, Maryland
32. Savannah, Georgia
33. Erie, Pennsylvania
34. Duluth, Minnesota/Superior, Wisconsin
35. Chicago, Illinois
36. Milwaukee, Wisconsin
37. Kenosha, Wisconsin
38. Cleveland, Ohio
39. Toledo, Ohio
40. Bay City, Michigan

Annex II

PORTS OF THE UNION OF SOVIET SOCIALIST REPUBLICS OPEN TO CALLS UPON NOTICE

1. Murmansk
2. Onega
3. Arkhangel'sk
4. Mezen'
5. Nar'yan-Mar
6. Igarka
7. Leningrad
8. Vyborg
9. Pyarnu
10. Riga
11. Ventspils
12. Klaipeda
13. Tallinn
14. Vysotsk
15. Reni
16. Izmail
17. Kiliya
18. Belgorod-Dnestrovskiy
19. Il'ichevsk
20. Odessa
21. Kherson
22. Novorossiysk
23. Tuapse
24. Poti
25. Batumi
26. Sochi
27. Sukhumi
28. Yalta
29. Zhdanov
30. Berdyansk
31. Nakhodka
32. Aleksandrovsk-Sakhalinskiy
33. Makarevskiy Roadstead (Roadstead Doue)
34. Oktyabr'skiy
35. Shakhtersk
36. Uglegorsk
37. Kholmsk
38. Nevel'sk
39. Makarov Roadstead
40. Poronaysk

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ANNEX III

SUPPLEMENTAL AGREEMENT ON NATIONAL FLAG CARGO CARRIAGE

WHEREAS, each Party recognizes the policy of the other concerning the participation of third flags in its trade, each Party also recognizes the interest of the other in carrying a substantial part of its foreign trade in vessels of its own registry and thus both Parties intend that their national flag vessels will each carry equal and substantial shares of the trade between the two nations in accordance with this Annex, and

WHEREAS, each Party has agreed that, where it controls the selection of the carrier for its export and import cargoes, it will provide to vessels under the flag of the other Party participation equal to that of vessels under its own flag, it is agreed as follows:

1. Definitions

For the purpose of this Annex and the Agreement of which this Annex is a part:

a. "Substantial share of the trade between the two nations" means not less than one-third of bilateral cargoes.

b. "Bilateral cargo" means any cargo, the shipment of which originates in the territory of one Party and moves in whole or in part by sea to a destination in the territory of the other Party, whether by direct movement or by transshipment through third countries.

c. "Controlled cargo" means any bilateral cargo with respect to which a public authority or public entity of either Party or their agents has the power of designating the carrier or the flag of carriage at any time prior to such designation, and includes:

(i) on the United States side all bilateral cargo which a public authority or public entity of the United States has or could have the power at any time to designate the flag of carriage pursuant to cargo preference legislation, and

(ii) on the Soviet side all bilateral cargo imported into or exported from the territory of the U.S.S.R. where a commercial body or other authority or entity of the U.S.S.R. has or could have the power at any time to designate the carrier.

d. "Accountable liner share" means the U.S. dollar freight value of liner carryings of controlled cargo by vessels under the flag of each Party, computed for accounting purposes using the conference rates in effect at the time of carriage or, in the absence of such rates, using other rates to be agreed between the two Parties.

e. "Accountable charter share" means the U.S. dollar freight value of carryings under contracts or arrangements covering the carriage of controlled cargo by vessels under the flag of each Party, which are not in liner service, computed for accounting purposes at rates to be agreed between the Parties. Accountable charter share will not include movements of any bulk cargoes in shipload lots of 8,000 long tons or more from the Union of Soviet Socialist Republics to the United States that are carried by the national flag vessels of either Party provided the conditions stated in subparagraph b of paragraph 3 of this Annex have been complied with.

f. "Accounting period" means a calendar year or any portion of an incomplete calendar year during which this Agreement is in effect.

2. General operating rules

a. Each Party undertakes to ensure that its controlled cargo is directed in a manner which

(i) provides to vessels under the flag of the other Party an accountable liner share and an accountable charter share equal in each category to those of vessels under its flag, and which continually maintains parity during each accounting period, and

(ii) is consistent with the intention of the Parties that their national flag vessels will each carry not less than one-third of bilateral cargoes.

b. To the extent that bilateral cargo that is not controlled cargo is carried in a manner which does not maintain parity between national flag vessels, computed in accordance with the principles specified in subparagraphs d and e of paragraph 1 of this Annex, the excess of such carriage will be added to the accountable liner share or accountable charter share, as the case may be, of the overcarrier and will be offset to the extent possible by an entitlement of a compensating share of controlled cargo in the appropriate category to the undercarrier.

c. Whenever vessels under the flag of one Party are not available to carry controlled cargo offered for carriage between ports served by such vessels with reasonable notice and upon reasonable terms and conditions of carriage, the offering Party shall be free to direct such cargo to its national flag or to third flag vessels. Cargo so directed to the offering Party's national flag vessels will not be included in its accountable liner share or accountable charter share for purposes of subparagraph a(i) of paragraph 2 of this Annex, if the designated representative of the other Party certifies that its national flag vessels were in fact unavailable at the time of the offer.

d. Cargo not carried in the vessels of a Party because of nonavailability of a vessel shall nonetheless be included in bilateral cargo for purposes of subparagraph a (ii) of paragraph 2 of this Annex, and controlled cargo shall continue to be directed to meet the undertakings of said subparagraph. To the extent that deficiencies in meeting the undertakings in such subparagraph exist at the end of an accounting period because of unavailability of vessels of a Party which the representative of that Party has certified were unavailable as provided above in subparagraph c of paragraph 2, the other Party shall not be required to make up such deficiency in the following accounting period.

e. To the extent consistent with the foregoing provisions of this paragraph 2, each Party is free to utilize the services of third flag shipping for the carriage of controlled cargo.

3. Special bulk cargo rules

a. When controlled bulk cargo is carried from the United States to the Union of Soviet Socialist Republics by U.S.-flag vessels, such cargo shall be carried at a mutually acceptable rate, provided that this shall not prevent the offering and fixing of a lower rate if such lower rate is accepted by a U.S.-flag carrier at the time of offering.

b. It is recognized that movements of any bulk cargoes in shipload lots of 8,000 long tons or more from the Union of Soviet Socialist Republics to the United States shall be carried at the then current market rates. In furtherance of this objective, an equivalent quantity

of such controlled cargoes as are offered to Soviet-flag vessels will be offered to U.S.-flag vessels at the current charter market rate and with reasonable notice. Any offerings of such cargoes that are not accepted by U.S.-flag vessels may be carried by Soviet-flag vessels or other vessels.

4. Implementation

a. Each Party shall designate a representative for implementation of the principles and rules of this Annex, the representative of the United States being the Maritime Administration, Department of Commerce, and the representative of the Union of Soviet Socialist Republics being the Ministry of Merchant Marine. Each Party shall authorize its representative to take action under its laws and procedures, and in consultation with the designated representative of the other Party, to implement this Annex, as well as to remedy any departure from the agreed operating rules.

b. The Parties further agree that the designated representatives shall:

(i) meet annually for a comprehensive review of the movement of bilateral cargo and for such other purposes related to the Agreement as may be desirable;

(ii) engage in such consultations, exchange such information and take such action as may be necessary to insure effective operation of this Annex and the Agreement of which this Annex is a part;

(iii) make mutually satisfactory arrangements or adjustments, including adjustments between accounting shares and accounting periods, to carry out at all times the objectives of this Annex and the Agreement of which this Annex is a part. Any departures from such objectives shall be accommodated on a calendar quarterly basis to the extent possible and in no event shall departures be permitted to continue beyond the first three months of the next accounting period; and

(iv) resolve any other problems in the implementation of this Annex and the Agreement of which this Annex is a part.

5. Commercial arrangements

a. The Parties recognize that, pursuant to their respective laws or policies, carriers under their flags may enter into commercial arrangements for the service and stabilization of the trade between them which shall not unduly prejudice the rights of third-flag carriers to compete for the carriage of controlled cargo between the territories of the Parties.

b. Such commercial arrangements shall not relieve the Parties of their obligations under this Annex and the Agreement of which this Annex is a part.

APPENDIX D

Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding Settlement of Lend Lease, Reciprocal Aid and Claims [1]

The Government of the United States of America and the Government of the Union of Soviet Socialist Republics,

Considering the need to settle obligations arising out of the prosecution of the war against aggression in order to foster mutual confidence and the development of trade and economic relations between the two countries,

Desiring to further the spirit of friendship and mutual understanding achieved by the leaders of both countries at the Moscow Summit,

Recognizing the benefits of cooperation already received by them in the defeat of their common enemies, and of the aid furnished by each Government to the other in the course of the war, and

Desiring to settle all rights and obligations of either Government from or to the other arising out of lend lease and reciprocal aid or otherwise arising out of the prosecution of the war against aggression,

Have agreed as follows:

1. This Agreement represents a full and final settlement of all rights, claims, benefits and obligations of either Government from or to the other arising out of or relating to:

(a) the Agreement of June 11, 1942, between the Governments of the United States of America and the Union of Soviet Socialist Republics on principles applying to mutual aid in the prosecution of the war against aggression, including the arrangements between the two Governments preliminary to and replaced by said Agreement,

(b) the Agreement of October 15, 1945, between the Governments of the United States of America and the Union of Soviet Socialist Republics concerning the disposition of lend-lease supplies in inventory or procurement in the United States of America, and

(c) any other matter in respect of the conduct of the war against aggression during the period June 22, 1941 through September 2, 1945.

2. In making this Agreement both Governments have taken full cognizance of the benefits and payments already received by them under the arrangements referred to in Paragraph 1 above. Accordingly, both Governments have agreed that no further benefits will be sought by either Government for any obligation to it arising out of or relating to any matter referred to in said Paragraph 1.

3. (a) The Government of the Union of Soviet Socialist Republics hereby acquires, and shall be deemed to have acquired on September 20, 1945, all such right, title and interest as the Government of the

[1] Source: U.S. Department of Commerce.

United States of America may have in all lend lease materials transferred by the Government of the United States of America to the Government of the Union of Soviet Socialist Republics, including any article (i) transferred under the Agreement of June 11, 1942, referred to above, (ii) transferred to the Government of the Union of Soviet Socialist Republics under Public Law II of the United States of America of March 11, 1941, or transferred under that Public Law to any other government and retransferred prior to September 20, 1945 to the Government of the Union of Soviet Socialist Republics, (iii) transferred under the Agreement of October 15, 1945, referred to above, or (iv) otherwise transferred during the period June 22, 1941 through September 20, 1945 in connection with the conduct of the war against aggression.

(b) The Government of the United States of America hereby acquires, and shall be deemed to have acquired on September 20, 1945, all such right, title and interest as the Government of the Union of Soviet Socialist Republics may have in all reciprocal aid materials transferred by the Government of the Union of Soviet Socialist Republics to the Government of the United States of America during the period June 22, 1941 through September 20, 1945.

4. (a) The total net sum due from the Government of the Union of Soviet Socialist Republics to the Government of the United States of America for the settlement of all matters set forth in Paragraph 1 of this Agreement shall be U.S. $722,000,000 payable as provided in subparagraphs (b), (c), and (d) of this Paragraph 4.

(b) (i) Three installments shall be due and payable as follows: $12,000,000 on October 18, 1972, $24,000,000 on July 1, 1973 and $12,000,000 on July 1, 1975.

(ii) Subject to subparagraph (c) of this Paragraph 4, after the date ("Notice Date") on which a note from the Government of the United States of America is delivered to the Government of the Union of Soviet Socialist Republics stating that the Government of the United Srates of America has made available most-favored-nation treatment for the Union of Soviet Socialist Republics no less favorable than that provided in an Agreement Between the Governments of the United States of America and the Union of Soviet Socialist Republics Regarding Trade signed on the date hereof, the balance of $674,000,000 in payment of lend lease accounts shall be paid in equal installments ("Regular Installments") as follows:

(1) If the Notice Date falls on or before May 31, 1974, the first Regular Installment shall be due and payable on July 1, 1974, and subsequent Regular Installments shall be due and payable annually on July 1 of each year thereafter through July 1, 2001, or (2) If the Notice Date falls on or after June 1, 1974, and (A) If the Notice Date occurs in the period of June 1 through December 1 of any year, the first Regular Installment shall be due and payable not more than 30 days following the Notice Date and subsequent Regular Installments shall be due and payable annually on June 1 of each year thereafter through July 1, 2001; or (B) If the Notice Date occurs in the period of December 2 of any year through May 31 of the following year, the first Regular Installment

shall be due and payable on the July 1 next following the Notice Date and subsequent Regular Installments shall be due and payable annually on July 1 of each year thereafter through July 1, 2001.

(c) In any year, upon written notice to the Government of the United States of America that a deferment of a Regular Installment (except the first and last Regular Installment) next due is necessary in view of its then current and prospective economic conditions, the Government of the Union of Soviet Socialist Republics shall have the right to defer payment of such Regular Installment ("Deferred Regular Installment"). Such right of deferment may be exercised on no more than four occasions. On each such occasion, without regard to whether the Government of the Union of Soviet Socialist Republics defers any subsequent Regular Installments, the Deferred Regular Installment shall be due and payable in equal annual installments on July 1 of each year commencing on the July 1 next following the date the Deferred Regular Installment would have been paid if the Government of the Union of Soviet Socialist Republics had not exercised its right of deferment as to such Regular Installment with the final payment on the Deferred Regular Installment on July 1, 2001, together with interest on the unpaid amount of the Deferred Regular Installment from time to time outstanding at three percent per annum, payable at the same time as the Deferred Regular Installments is due and payable.

(d) The Government of the Union of Soviet Socialist Republics shall have the right to prepay at any time all or any part of its total settlement obligation, provided that no such prepayment may be made at any time when any payment required to be made under this Paragraph 4 has not been paid as of the date on which it became due and payable.

5. Both Governments have agreed that this Agreement covers only rights, claims, benefits and obligations of the two Governments. Further, nothing in this Agreement shall be deemed to terminate the provisions of Article III of the Agreement of June 11, 1942, referred to above.

Done at Washington in duplicate this 18th day of October, 1972, in the English and Russian languages, both texts being equally authentic.

WILLIAM P. ROGERS,
Secretary of State
(For the Government of the United States of America).

N. PATOLICHEV,
Minister of Foreign Trade
(For the Government of the Union of Soviet Socialist Republics).

APPENDIX E

Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding Trade[1]

The Government of the United States of America and the Government of the Union of Soviet Socialist Republics,

Considering that the peoples of the United States of America and of the Union of Soviet Socialist Republics seek a new era of commercial friendship, an era in which the resources of both countries will contribute to the well-being of the peoples of each and an era in which common commercial interest can point the way to better and lasting understanding,

Having agreed at the Moscow Summit that commercial and economic ties are an important and necessary element in the strengthening of their bilateral relations,

Noting that favorable conditions exist for the development of trade and economic relations between the two countries to their mutual advantage,

Desiring to make the maximum progress for the benefit of both countries in accordance with the tenets of the Basic Principles of Relations Between the United States of America and the Union of Soviet Socialist Republics signed in Moscow on May 29, 1972,

Believing that agreement on basic questions of economic trade relations between the two countries will best serve the interests of both their peoples,

Have agreed as follows:

Article 1

1. Each Government shall accord unconditionally to products originating in or exported to the other country treatment no less favorable than that accorded to like products originating in or exported to any third country in all matters relating to:

(a) customs duties and charges of any kind imposed on or in connection with importation or exportation including the method of levying such duties and charges;

(b) internal taxation sale, distribution, storage and use;

(c) charges imposed upon the international transfer of payments for importation or exportation; and

(d) rules and formalities in connection with importation or exportation.

2. In the event either Government applies quantitative restrictions to products originating in or exported to third countries, it shall afford

[1] Source: U.S. Department of Commerce.

to like products originating in or exported to the other country equitable treatment vis-a-vis that applied in respect of such third countries.

3. Paragraphs 1 and 2 of this Article 1 shall not apply to (i) any privileges which are granted to either Government to neighboring countries with a view toward facilitating frontier traffic, or (ii) any preferences granted by either Government in recognition of Resolution 21 (II) adopted on March 26, 1968 at the Second UNCTAD, or (iii) any action by either Government which is permitted under any multilateral trade agreement to which such Government is a party on the date of signature of this Agreement, if such agreement would permit such action in similar circumstances with respect to like products originating in or exported to a country which is a signatory thereof, or (iv) the exercise by either Government of its rights under Articles 3 or 8 of this Agreement.

Article 2

1. Both Governments will take appropriate measures, in accordance with the laws and regulations then current in each country, to encourage and facilitate the exchange of goods and services between the two countries on the basis of mutual advantage and in accordance with the provisions of this Agreement. In expectation of such joint efforts, both Governments envision that total bilateral trade in comparison with the period 1969–1971 will at least triple over the three-year period contemplated by this Agreement.

2. Commercial transactions between the United States of America and the Union of Soviet Republics shall be effected in accordance with the laws and regulations then current in each country with respect to import and export control and financing, as well as on the basis of contracts to be concluded between natural and legal persons of the United States of America and foreign trade organizations of the Union of Soviet Socialist Republics. Both Governments shall facilitate, in accordance with the laws and regulations then current in each country, the conclusion of such contracts, including those on a long-term basis, between natural and legal persons of the United States of America and foreign trade organizations of the Union of Soviet Socialist Republics. It is understood that such contracts will generally be concluded on terms customary in international commercial practice.

3. Both Governments, by mutual agreement, will examine various fields, in which the expansion of commercial and industrial cooperation is desirable, with regard for, in particular, the long-term requirements and resources of each country in raw materials, equipment and technology and, on the basis of such examination, will promote cooperation between interested organizations and enterprises of the two countries with a view toward the realization of projects for the development of natural resources and projects in the manufacturing industries.

4. The Government of the Union of Soviet Socialist Republics expects that, during the period of effectiveness of this Agreement, foreign trade organizations of the Union of Soviet Socialist Republics will place substantial orders in the United States of America for machinery, plant and equipment, agricultural products, industrial products and consumer goods produced in the United States of America.

Article 3

Each Government may take such measures as it deems appropriate to ensure that the importation of products originating in the other country does not take place in such quantities or under such conditions as to cause, threaten or contribute to disruption of its domestic market. The procedures under which both Governments shall cooperate in carrying out the objectives of this Article are set forth in Annex 1, which constitutes an integral part of this Agreement.

Article 4

All currency payments between natural and legal persons of the United States of America and foreign trade and other appropriate organizations of the Union of Soviet Socialist Republics shall be made in United States dollars or any other freely convertible currency mutually agreed upon by such persons and organizations.

Article 5

1. The Government of the United States of America may establish in Moscow a Commercial Office of the United States of America and the Government of the Union of Soviet Socialist Republics may establish in Washington a Trade Representation of the Union of Soviet Socialist Republics. The Commercial Office and the Trade Representation shall be opened simultaneously on a date and at locations to be agreed upon.

2. The status concerning the functions, privileges, immunities and organization of the Commercial Office and the Trade Representation is set forth in Annexes 2 and 3, respectively, attached to this Agreement, of which they constitute an integral part.

3. The establishment of the Commercial Office and the Trade Representation shall in no way affect the rights of natural or legal persons of the United States of America and of foreign trade organizations of the Union of Soviet Socialist Republics, either in the United States of America or in the Union of Soviet Socialist Republics, to maintain direct relations with each other with a view to the negotiation, execution and fulfillment of trade transactions. To facilitate the maintenance of such direct relations the Commercial Office may provide office facilities at its location to employees or representatives of natural and legal persons of the United States of America, and the Trade Representation may provide office facilities at its location to employees or representatives of foreign trade organizations of the Union of Soviet Socialist Republics, which employees and representatives shall not be officers or members of the administrative, technical or service staff of the Commercial Office or the Trade Representation. Accordingly, the Commercial Office and the Trade Representation, and their respective officers and staff members, shall not participate directly in the negotiation, execution or fulfillment of trade transactions or otherwise carry on trade.

Article 6

1. In accordance with the laws and regulations then current in each country, natural and legal persons of the United States of America and foreign trade organizations of the Union of Soviet Socialist

Republics may open their representations in the Union of Soviet Socialist Republics and the United States of America, respectively. Information concerning the opening of such representations and provision of facilities in connection therewith shall be provided by each Government upon the request of the other Government.

2. Foreign trade organizations of the Union of Soviet Socialist Republics shall not claim or enjoy in the United States of America, and private natural and legal persons of the United States of America shall not claim or enjoy in the Union of Soviet Socialist Republics, immunities from suit or execution of judgment or other liability with respect to commercial transactions.

3. Corporations, stock companies and other industrial or financial commercial organizations, including foreign trade organizations, domiciled and regularly organized in conformity to the laws in force in one of the two countries shall be recognized as having a legal existence in the other country.

Article 7

1. Both Governments encourage the adoption of arbitration for the settlement of disputes arising out of international commercial transactions concluded between natural and legal persons of the United States of America and foreign trade organizations of the Union of Soviet Socialist Republics, such arbitration to be provided for by agreements in contracts between such persons and organizations, or, if it has not been so provided, to be provided for in separate agreements between them in writing executed in the form required for the contract itself, such agreements:

(a) to provide for arbitration under the Arbitration Rules of the Economic Commission for Europe of January 20, 1966, in which case such agreements should also designate an Appointing Authority in a country other than the United States of America or the Union of Soviet Socialist Republics for the appointment of an arbitrator or arbitrators in accordance with those Rules; and

(b) to specify as the place of arbitration a place in a country other than the United States of America or the Union of Soviet Socialist Republics that is a party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Such persons and organizations, however, may decide upon any other form of arbitration which they mutually prefer and agree best suits their particular needs.

2. Each Government shall ensure that corporations, stock companies, and other industrial or financial commercial organizations including foreign trade organizations, domiciled and regularly organized in conformity to the laws in force in the other country shall have the right to appear before courts of the former, whether for the purpose of bringing an action or of defending themselves against one, including but not limited to, cases arising out of or relating to transactions contemplated by this Agreement. In all such cases the said corporations, companies and organizations shall enjoy in the other country the same rights which are or may be granted to similar companies of any third country.

Article 8

The provisions of this Agreement shall not limit the right of either Government to take any action for the protection of its security interests.

Article 9

1. This Agreement shall enter into force upon the exchange of written notices of acceptance. This Agreement shall remain in force for three years, unless extended by mutual agreement.

2. Both Governments will work through the Joint U.S.-U.S.S.R. Commercial Commission established in accordance with the Communique issued in Moscow on May 26, 1972, in overseeing and facilitating the implementation of this Agreement in accordance with the terms of reference and rules of procedure of the Commission.

3. Prior to the expiration of this Agreement, the Joint U.S.-U.S.S.R. Commercial Commission shall begin consultations regarding extension of this Agreement or preparation of a new agreement to replace this Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Agreement on behalf of their respective Governments.

DONE at Washington in duplicate this 18th day of October, 1972, in the English and Russian languages, each language being equally authentic.

PETER G. PETERSON,
Secretary of Commerce
(For the Government of the United States of America).

N. S. PATOLICHEV,
Minister of Foreign Trade
(For the Government of the Union of Soviet Socialist Republics).

ANNEX I

PROCEDURE FOR THE IMPLEMENTATION OF ARTICLE 3

1. Both Governments agree to consult promptly at the request of either Government whenever such Government determines that actual or prospective imports of a product originating in the other country under certain conditions or in certain quantities could cause, threaten or contribute to disruption of the market of the requesting country.

2. (a) Consultations shall include a review of the market and trade situation for the product involved and shall be concluded within sixty days of the request unless otherwise agreed during the course of such consultations. Both Governments, in carrying out these consultations, shall take due account of any contracts concluded prior to the request for consultations between natural and legal persons of the United States of America and foreign trade organizations of the Union of Soviet Socialist Republics engaged in trade between the two countries.

(b) Unless a different solution is agreed upon during the consultations, the quantitative import limitations or other conditions stated by the importing country to be necessary to prevent or remedy the market disruption situation in question shall be deemed agreed as between the two Governments.

(c) At the request of the Government of the importing country, if it determines that an emergency situation exists, the limitations or other conditions referred to in its request for consultation shall be put into effect prior to the conclusion of such consultations.

3. (a) In accordance with the laws and regulations then current in each country, each Government shall take appropriate measures to ensure that exports from its country of the products concerned do not exceed the quantities or vary from the conditions established for imports of such products into the other country pursuant to paragraphs 1 and 2 of this Annex I.

(b) Each Government may take appropriate measures with respect to imports into its country to ensure that imports of products originating in the other country comply with such quantitative limitations or conditions as may be established in accordance with paragraphs 1 and 2 of this Annex I.

Annex II

THE STATUS OF THE COMMERCIAL OFFICE OF THE UNITED STATES OF AMERICA IN THE UNION OF SOVIET SOCIALIST REPUBLICS

Article 1

The Commercial Office of the United States of America may perform the following functions:

1. Promote the development of trade and economic relations between the United States of America and the Union of Soviet Socialist Republics; and
2. Provide assistance to natural and legal persons of the United States of America in facilitating purchases, sales and other commercial transactions.

Article 2

1. The Commercial Office shall consist of one principal officer and no more than three deputy officers and a mutually agreed number of staff personnel, provided, however, that the number of officers and staff personnel permitted may be changed by mutual agreement of the two Governments.

2. The Commercial Office, wherever located, shall be an integral part of the Embassy of the United States of America in Moscow. The Government of the Union of Soviet Socialist Republics shall facilitate in accordance with its laws and regulations the acquisition or lease by the Government of the United States of America of suitable premises for the Commercial Office.

3. (a) The Commercial Office, including all of its premises and property, shall enjoy all of the privileges and immunities which are enjoyed by the Embassy of the United States of America in Moscow. The Commercial Office shall have the right to use cipher.

(b) The principal officer of the Commercial Office and his deputies shall enjoy all of the privileges and immunities which are enjoyed by members of the diplomatic staff of the Embassy of the United States of America in Moscow.

(c) Members of the administrative, technical, and service staffs of the Commercial Office who are not nationals of the Union of Soviet

Socialist Republics shall enjoy all of the privileges and immunities which are enjoyed by corresponding categories of personnel of the Embassy of the United States of America in Moscow.

ANNEX III

THE STATUS OF THE TRADE REPRESENTATION OF THE UNION OF SOVIET SOCIALIST REPUBLICS IN THE UNITED STATES OF AMERICA

Article 1

The Trade Representation of the Union of Soviet Socialist Republics may perform the following functions:

1. Promote the development of trade and economic relations between the Union of Soviet Socialist Republics and the United States of America; and
2. Represent the interests of the Union of Soviet Socialist Republics in all matters relating to the foreign trade of the Union of Soviet Socialist Republics with the United States of America and provide assistance to foreign trade organizations of the Union of Soviet Socialist Republics in facilitating purchases, sales and other commercial transactions.

Article 2

1. The Trade Representation shall consist of one principal officer, designated as Trade Representative, and no more than three deputy officers and a mutually agreed number of staff personnel, provided, however, that the number of officers and staff personnel permitted may be changed by mutual agreement of the two Governments.

2. The Trade Representation, wherever located, shall be an integral part of the Embassy of the Union of Soviet Socialist Republics in Washington. The Government of the United States of America shall facilitate in accordance with its laws and regulations the acquisition or lease by the Government of the Union of Soviet Socialist Republics of suitable premises for the Trade Representation.

3. (a) The Trade Representation, including all of its premises and property, shall enjoy all of the privileges and immunities which are enjoyed by the Embassy of the Union of Soviet Socialist Republics in Washington. The Trade Representation shall have the right to use cipher.

(b) The Trade Representative and his deputies shall enjoy all of the privileges and immunities which are enjoyed by members of the diplomatic staff of the Embassy of the Union of Soviet Socialist Republics in Washington.

(c) Members of the administrative, technical and service staffs of the Trade Representation who are not nationals of the United States of America shall enjoy all of the privileges and immunities which are enjoyed by corresponding categories of personnel of the Embassy of the Union of Soviet Socialist Republics in Washington.

EXCHANGE OF LETTERS [1]

WASHINGTON, D.C., *October 18, 1972.*

MR. N. S. PATOLICHEV,
Minister of Foreign Trade of the Union of Soviet Socialist Republics

DEAR MR. MINISTER: I have the honor to refer to our recent discussions relating to Article 3 and Annex I of the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding Trade to be signed today. In accordance with those provisions and discussions, and consistent with current United States laws and regulations concerning exports, it is understood that the United States Government will meet its obligations under paragraph 3(a) of Annex I with respect to limitations or conditions established pursuant to a request of the Government of the Union of Soviet Socialist Republics under paragraphs 1 and 2 of Annex I by making available to United States exporters information regarding the quantities or conditions stated by the Government of the Union of Soviet Socialist Republics in its request, or as otherwise established following consultations provided for under Annex I.

I further understand that the Government of the Union of Soviet Socialist Republics will limit or establish conditions on exports of any product from the Union of Soviet Socialist Republics to the United States if requested to do so in accordance with Annex I.

I would appreciate receiving your confirmation of the foregoing understandings on behalf of the Government of the Union of Soviet Socialist Republics.

Please accept, Mr. Minister, the assurances of my highest consideration.

Sincerely yours,

PETER G. PETERSON.

WASHINGTON, D.C., *October 18, 1972.*

MR. N. S. PATOLICHEV,
Minister of Foreign Trade of the Union of Soviet Socialist Republics

DEAR MR. MINISTER: I have the honor to confirm, as was stated by my delegation in the course of the negotiations leading to the conclusion today of the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding Trade, that while the Trade Representation of the Union of Soviet Socialist Republics in Washington established pursuant to Article 5 of said Agreement, its officers and staff members may engage in appropriate activities to promote trade generally between the two countries for the purpose of said Agreement, as is customary in international practice, United States legislation in force, i.e., Title 22 of the United States Code, Sections 252–254, makes it inappropriate for the Trade Representation, its officers and staff to participate directly in the negotiation, execution or fulfillment of trade transactions or otherwise carry on trade.

I have the further honor to confirm that at such time as the United States of America shall have become a party to the Vienna Convention on Diplomatic Relations, dated April 18, 1961, and its domestic

[1] Source: U.S. Department of Commerce.

legislation shall have been revised to accord fully with the terms of Articles 29 through 45 of said Convention, regarding diplomatic privileges and immunities, my Government will be prepared to give favorable consideration to amending the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding Trade by deleting the second and third sentences of paragraph 3 of Article 5, thus permitting officers and members of the administrative, technical and service staffs of the Commercial Office of the United States of America in Moscow and the Trade Representation of the Union of Soviet Socialist Republics in Washington to participate directly in the negotiation, execution and fulfillment of trade transactions and otherwise carry on trade.

Please accept, Mr. Minister, the assurances of my highest consideration.

Sincerely yours,

PETER G. PETERSON.

WASHINGTON, D.C., *October 18, 1972.*

Mr. N. S. PATOLICHEV,
Minister of Foreign Trade of the Union of Soviet Socialist Republics.

DEAR MR. MINISTER: I have the honor to acknowledge the receipt of your letter of this date, with attachments, which reads as follows:

> Dear Mr. Secretary: This is in response to your request for information on the procedures established by the Ministry of Foreign Trade for the accreditation of offices of foreign companies including United States companies, and on the facilities made available to such companies once accreditation has been approved. Such information is attached hereto.
>
> United States companies will receive treatment no less favorable than that accorded to business entities of any third country in all matters relating to accreditation and business facilitation. Applications by United States firms for accreditation will be handled expeditiously. Any problems arising out of these applications that cannot readily be resolved through the regular procedures shall be resolved through consultation under the Joint U.S.-U.S.S.R. Commercial Commission at the request of either side.
>
> As you have been advised, the U.S.S.R. Chamber of Commerce and Industry and the State Committee of the Council of Ministers of the U.S.S.R. for Science and Technology are establishing a large trade and economic exposition center which will include display pavilions of the various participating countries. The United States has been invited to have such a pavilion. Further, to meet the growing interest of foreign firms in establishing a permanent residence in Moscow, we have decided to construct a large trade center containing offices, hotel and apartment facilities and are asking United States companies to make proposals for and cooperate in the development and building of the trade center. The trade center will be used for, among other things, housing and office facilities for accredited United States companies.

Prior to the availability of these facilities, however, office facilities of an appropriate size in buildings accessible to trade sources will be made available as soon as possible once a United States company is accredited. The facilities to which such firms shall be entitled are explained in the attached information.

It is recognized that from time to time United States businessmen may have problems regarding such facilities which they are unable to resolve through discussions with various foreign trade organizations or other organizations. In such cases officials of my Ministry, as well as those of the State Committee of the Council of Ministers of the USSR for Science and Technology, shall be available through their respective protocol sections for assistance in resolving these problems.

Please accept, Mr. Secretary, the assurances of my highest consideration.

Sincerely yours,

N. PATOLICHEV.

I have the further honor to inform you that I have taken cognizance of the contents of the above letter and its attachments.

Please accept, Mr. Minister, the assurances of my highest consideration.

Sincerely yours,

Mr. PETER G. PETERSON,
Secretary of Commerce of the United States of America.

[*Attachment to letter of N. Patolichev to Secretary Peterson, October 18, 1972*]

Summary of business facilities for foreign companies

An accredited company will be authorized to employ at its office not more than five American or other non-Soviet personnel, as well as Soviet personnel if desired. If requested, such communications facilities as telephones, extensions, telex equipment will be made available promptly. The name, location, and function of an accredited office will be listed in the latest issue of suitable business directories if such are published. Subject to the requirement that such equipment be exported when no longer needed by its office and subject to applicable customs regulations, accredited offices will be permitted to import, as promptly as desired, typewriters, calculators, dictation and copying equipment, one stationwagon-type automobile, as well as other equipment for the purpose of efficient and business-like operation of the office.

Subject to applicable customs regulations, each non-Soviet employee will be permitted to import a passenger car, household utilities, appliances, furniture and other necessary living items at any time within a year after the arrival of the employee in Moscow. In addition, suitable housing for such employee and family will be made available as soon as possible.

Normally, such employees and members of their families will have visas prepared for exit from and entry into the Soviet Union within three to five days. In the case of a business or personal emergency, however, a special effort is made to issue visas more promptly, and, in the case of demonstrated need, the question of granting a mulitple entry and exit visa shall be examined very carefully.

Instructions of the procedure for the issuance of permits for the opening of offices of foreign firms in the USSR and for the regulation of their activity

1. Permits for the opening of offices of foreign firms in the U.S.S.R., referred to hereinafter as "Office(s)," may, in accordance with legislation in force in the U.S.S.R., be issued to foreign firms that are known on the world market and that have affirmatively presented themselves in the capacity of trade partners of Soviet foreign trade organizations with whom they have concluded especially large commercial transactions. In this connection it will also be considered that the Offices will effectively assist Soviet foreign trade organizations in the development of Soviet exports, including machinery and equipment, and also in the import of machinery and equipment that is technologically modern, and in familiarization with the newest achievements of world technology.

2. A foreign firm interested in opening an Office shall submit to the Protocol Section of the Ministry of Foreign Trade, referred to hereinafter as the "Protocol Section", an application containing the following information:

(a) the name of the firm, the date of its formation, and the place of residence;

(b) the subject matter of its activity, the organs of its administration, and the persons representing the firm according to its charter (the articles of incorporation or the articles of agreement of the firm);

(c) the date and place of ratification or registration of the charter (the articles of incorporation or the articles of agreement of the firm) on the basis of which the firm operates;

(d) the charter capital of the firm;

(e) with which Soviet foreign trade organization the firm has concluded a transaction for the performance of which the firm requests a permit for the opening of an Office, the subject matter and amount of the transaction, and the period of operation of the transaction;

(f) with which other Soviet foreign trade organizations the firm has commercial relations.

The information enumerated in subparagraphs "a", "b", "c", and "d" must be confirmed by documents (by-laws, charter, articles of incorporation or articles of agreement, an extract from a trade register, etc.) attached to the application in the form of notarized copies certified in accordance with established procedure by consular offices of the U.S.S.R. abroad.

Note.—Besides the indicated information and documents, a firm shall submit, upon inquiry by the Ministry of Foreign Trade, also other information and documents concerning the firm's activities.

3. The representative of a foreign firm presenting in its name a petition for the opening of an Office in the U.S.S.R. shall give to the Protocol Section a properly prepared power of attorney.

4. In the permit for opening an Office, issued by the Protocol Section in the accompanying form, there shall be indicated:

(a) the objective of opening the Office;

(b) the conditions under which the firm is permitted to have the Office;

(c) the period for which the permit is issued;

(d) the number of personnel at the Office who are foreign citizens and employees of the firm.

5. On questions of the purchase and sale of goods the Office may communicate with Soviet organizations that do not have the right to operate in foreign trade only through the Ministry of Foreign Trade and shall conduct its activities in observance of the laws, decisions of the Government, instructions, and rules in force in the U.S.S.R.

6. Every quarter the Office shall send to the Protocol Section written information on the Office's activities, its commercial contacts with Soviet organizations, its export and import transactions concluded, and the course of their performance.

7. The person who is authorized to be the head of the Office shall give to the Protocol Section a properly prepared power of attorney from the firm, and shall inform the Protocol Section in a timely fashion of his replacement and also of the dates of arrival in the U.S.S.R. and of departure from the U.S.S.R. of personnel of the Office.

8. An Office opened in accordance with the procedure established by the present Instructions shall apply, on questions of the furnishing to it of day-to-day services, to the Ministry of Foreign Affairs of the U.S.S.R., the Administration for Services to the Diplomatic Corps.

9. The activity of an Office shall terminate:

(a) upon expiration of the period for which its permit was issued;

(b) in the event of termination of the activity abroad of the firm having the Office in the U.S.S.R.;

(c) upon decision of the Ministry of Foreign Trade in the event of violation by the Office of the conditions under which the firm was permitted to open the Office in the U.S.S.R., or in the event of a declaration that the Office's activity does not correspond to the interest of the U.S.S.R.

WASHINGTON, D.C., *October 18, 1972.*

MR. N. S. PATOLICHEV,
Minister of Foreign Trade of the
Union of Soviet Socialist Republics.

DEAR MR. MINISTER: This is in response to your request pursuant to Article 6 of the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding Trade for information on policies and procedures applicable to foreign trade organizations and nationals of the Union of Soviet Socialist Republics seeking to establish business facilities in the United States for the conduct of commercial activities, and with respect to assistance that might be given by the Government of the United States of America in that regard to such organizations and persons.

From our many discussions, I am satisfied that both sides accept the principle of expansion of business facilities in each other's country as an adjunct for substantially expanded trade.

Both sides have reasons that may, in some cases, make it necessary not to honor all requests for expanded facilities and new organizations. However, we are both committed to expanding such facilities.

Where there is a clear need established for such added facilities, I will assure you that the Government of the United States will sympathetically consider such requests.

As I have told you I believe it is important that we select examples of certain kinds of organizations and facilities that are likely to be needed in the future in order to expand trade and commerce substantially.

As one example, we recognize that certain very large projects may require from time to time purchasing organizations in the United States to coordinate such activities on those projects. We believe the Kama River Purchasing Commission is a good example of our mutual desire to improve trade between our two countries and to provide necessary facilities and organizations to achieve that objective. Thus, I am pleased to tell you the terms set out in the attachment for the Temporary Purchasing Commission for the procurement of equipment for the Kama River Truck Plant are acceptable.

As another example, the Government of the United States of America recognizes the need for the Union of Soviet Socialist Republics to stimulate more exports to the United States, and will cooperate to promote such exports where appropriate. Accordingly, if in the next few months the Soviet Government submits a request that demonstrates a clear need for a particular export facility or organization to stimulate Soviet exports to the United States, we will view such a request sympathetically.

Sincerely yours,

PETER G. PETERSON.

Attachment as stated.

[*Attachment to letter of Secretary Peterson to N. Patolichev, October 18, 1972*]

With respect to the request on the part of the Government of the Union of Soviet Socialist Republics for approval of a Temporary Purchasing Commission for the Kama River Truck Complex, the Government of the United States of America understands the following:

1. The Temporary Purchasing Commission would be created with the purpose of:

(a) Furnishing assistance for the placement of equipment orders for the construction of the Kama River Truck Complex in the Union of Soviet Socialist Republics.

(b) Supervising on behalf of the Soviet Ministry of Foreign Trade preparation and shipment of equipment purchased from United States companies and training of Soviet experts for the Kama River Truck Complex.

(c) Assisting United States companies in negotiations and fulfillment of contracts with Soviet foreign trade organizations, and assisting United States experts sent to the Union of Soviet Socialist Republics as technical consultants and coordinators of equipment assembly in connection with the Kama River Truck Complex.

2. The Temporary Purchasing Commission would be established provisionally for a period of one year, and could be renewed, by mutual

agreement, for as many as three additional periods of one year each. The Temporary Purchasing Commission would be responsible to the Soviet Ministry of Foreign Trade and the Trade Representative of the Union of Soviet Socialist Republics in the United States.

3. The personnel of the Temporary Purchasing Commission would consist of a Chairman and no more than 15 additional persons, including technical assistants and staff.

4. The location of the Commission would be New York City. The specific location of the premises proposed to be occupied by the Temporary Purchasing Commission would be subject to prior agreement with the Government of the United States.

5. Permission to travel to and within the United States would be governed by existing laws and regulations.

APPENDIX F-1

Eximbank Credits—U.S.S.R. (As of Feb. 28, 1974) [1]

APPROVED CREDITS

[Dollar amounts in thousands]

Buyer	Item	U.S. value	Exim loan	Approved
Mashinoimport	Submersible electric pumps	$25,937	$11,672	Feb. 21, 1973
Stankoimport, Techmashimport.	Plant to produce tableware and dishware	6,893	3,102	Mar. 5, 1973
Avtopromimport, Metallurgimport, Stankoimport.	Kama River truck plant	342,120	153,950	Do.[1]
Technopromimport	250 circular knitting machines	5,620	2,529	Sept. 6, 1973
Stankoimport	2d tableware plant	21,833	9,825	Nov. 26, 1973
Do	2 assembly lines for manufacturing pistons	14,358	6,461	Do.
Mashinoimport	38 gas reinjection compressors	26,252	11,813	Dec. 20, 1937
Mettalurgimport	Iron ore pellet plant	36,000	16,200	Do.
Stankoimport	Machining friction drums	5,580	2,511	Do.
Do	Transfer line for manufacturing pistons	15,722	7,075	Do.
Techmashimport	Acetic acid plant	44,515	20,032	Feb. 21, 1974
Ufa MotorWorks	Transfer line for machine flywheels	7,458	3,356	Feb. 28, 1974
Total		552,288	248,526	

[1] Credit increased.

PENDING CREDITS APPLICATIONS AS OF FEB. 28, 1974—U.S.S.R.

[Dollar amounts in thousands]

Buyer	Project	U.S. value	Loan	PC letter dated
Techmashimport, Promsyrioimport	Chemical complex	$400,000	$180,000	June 4, 1973
U.S.S.R. Chamber of Commerce and Industry/Moscow City Council.	International trade center	80,000	36,000	Dec. 12, 1973
Traktoroexport	Canal building machinery	6,600	2,970	Jan. 10, 1974
Stankoimport	Valve making machinery	4,700	2,115	Do.
Total		491,300	221,085	

OUTSTANDING PRELIMINARY COMMITMENTS, U.S.S.R., AS OF FEB. 28, 1974

Buyer	No.	Applicant	Project	U.S. dollar content (thousands)	Exim loan (thousands)	PC letter dated—	Expiry
Stankoimport	2577	Vneshtorgbank	Automotive component manufacturing processes.	$37,000	$16,650	Jan. 10, 1974	Mar. 31, 1974
Total				37,000	16,650		

[1]Source: U.S. Export-Import Bank.

U.S.S.R.—PENDING PRELIMINARY COMMITMENT APPLICATIONS, AS OF FEB. 28, 1974

Number	Buyer	Applicant	Project	United States dollar content	United States dollar Exim loan
2607	Ministry of Geology	Vneshtorgbank	Yakutsk exploration phase	$110,000	$49,500
2745	Machinoimport	do	Oil pipeline pressure regulators	10,000	4,500
Total				120,000	54,000
Mar. 6, 1974			Tractor factory	50,000	22,500
New total				170,000	76,500

Soviet Purchases of U.S. Equipment and Services Supported by Eximbank Credits

[Dollar amount in thousands]

Soviet buyer	Project	Prime U.S. contractor and location	Total contract amount	Vendors/contractors/subsidiaries (by State)	Amounts
Mashinoimport	Submersible electric pumps	Redapump (division of TRW) Bartlesville, Okla	$20,034		
		Byron Jackson (division of Borg-Warner) Tulsa, Okla	5,903		
Technopromimport	250 circular knitting machines	Rockwell International, Norristown, Pa	5,620		
Stankoimport	Machining friction drums	Jones and Lamson (division of Waterbury Farrel Co.) Springfield, Vt.	5,580	Connecticut	$13.0
				Massachusetts	171.0
				Michigan	2,472.0
				New Hampshire	257.0
				Ohio	326.0
				Vermont	2,417.0
Do	2 assembly lines for manufacturing pistons:				
	1st contract	La Salle Machine Tool, Inc., Warren, Mich	6,441	Michigan	6,393.0
				Ohio	48.0
	2d contract	do	6,461	Michigan	6,406.0
				Ohio	55.0
Do	Transfer line for manufacturing pistons	do	15,722	Michigan	13,160.0
				Ohio	2,562.0
Mashinoimport	38 gas reinjection compressors	Solar Division of International Harvester, San Diego, Calif	26,252		
Metallurgimport	Iron ore pellet plant	Allis-Chalmers, Milwaukee, Wis	36,000	California	300.0
				Colorado	200.0
				Illinois	2,600.0
				Indiana	1,100.0
				Massachusetts	1,100.0
				Michigan	1,000.0
				Minnesota	300.0
				Missouri	1,000.0
				New Jersey	600.0
				New York	4,600.0
				Ohio	1,200.0
				Pennsylvania	1,200.0
				Rhode Island	200.0
				Texas	300.0
				Wisconsin	18,900.0
				Other	1,400.0

Soviet Purchases of U.S. Equipment and Services Supported by Eximbank Credits—Continued

[Dollar amount in thousands]

Soviet buyer	Project	Prime U.S. contractor and location	Total contract amount	Vendors/contractors/subsidiaries (by State)	Amounts
Avtopromimport, Metallurgimport, Stankoimport.	Kama River truck plant	Ajax Magnethermic, Warren, Ohio	$2,823	Kentucky	$1,500.0
				Ohio	1,500.0
		Ex-Cell-O Corp., Detroit, Mich	3,935	Michigan	3,200.0
				Other	700.0
		Vacuum Industries, Somerville, Mass	919	California	350.0
				Massachusetts	500.0
				New Jersey	75.0
				Pennsylvania	42.0
		Landis Tool, Waynesboro, Pa	8,666	Pennsylvania	7,000.0
				Other	1,700.0
		Raycon Corp., Ann Arbor, Mich	1,117	Michigan	1,100.0
		Wicks Machine Tool, Saginaw, Mich	2,241	do	2,241.0
		Swindell-Dressler, Pittsburgh, Pa	33,624	Alabama	$12,500.0
				Illinois	240.0
				Michigan	1,900.0
				Minnesota	1,900.0
				Ohio	4,100.0
				Pennsylvania	13,800.0
		La Salle Machine Tool Co., Warren, Mich	12,426	Michigan	12,400.0
		MTS Systems	645	California	100.0
				Minnesota	545.0
		National Engineering Co., Chicago, Ill	13,751	Illinois	3,000.0
				Kentucky	500.0
				Michigan	1,500.0
				New York	500.0
				Wisconsin	6,000.0
				Other	2,200.0
		Warner-Swassey, Worcester, Mass	1,529	Massachusetts	51.0
				Michigan	15.0
				New Jersey	69.0
				New York	35.0
				Ohio	21.0
				Wisconsin	37.0
				Other	1,300.0
		Carborundum Co., Pangborn Division (Hagerstown, Md.) Niagara Falls, N.Y.	9,908	Illinois	365.0
				Maryland	9,280.0
				New York	105.0
				Pennsylvania	130.0
				Other	417.0
		Crankshaft Machine, Jackson, Mich	3,360	Michigan	3,025.0
				Pennsylvania	250.0
				Wisconsin	25.0

Company	Total	State	Amount
Albany Machine, Jackson, Mich	3,083	Connecticut	150.0
		New York	2,880.0
		Pennsylvania	60.0
Cardinal/Scale International, Clifton, N.J	635	Missouri	535.0
		Pennsylvania	100.0
Ingersoll Milling Machine	20,290	Illinois	18,600.0
		Michigan	1,500.0
		Ohio	200.0
Cleveland Crane & Engineering, Wickliffe, Ohio	10,420	Connecticut	19.0
		Illinois	12.0
		Indiana	29.0
		Massachusetts	12.0
		Michigan	18.0
		Missouri	5.0
		New Jersey	3.0
		New York	8.0
		Ohio	9,076.0
		Oklahoma	1.0
		Pennsylvania	137.0
		Wisconsin	829.0
Shalco Systems, Cleveland, Ohio	673	Illinois	13.0
		Indiana	10.0
		Iowa	2.0
		Michigan	3.0
		Ohio	26.0
		Pennsylvania	.7
		Tennessee	1.0
		Vermont	2.0
		Wisconsin	13.0
		Other	601.0
Blaw-Knox Equipment, Pittsburgh, Pa	100	Pennsylvania	100.0
Cross Frazer, Frazer, Mich	1,533	Michigan	1,527.0
		Ohio	6.0
Sutter Products, Holly, Mich	6,950	California	4.0
		Illinois	248.0
		Michigan	4,701.0
		Ohio	180.0
		Pennsylvania	1,500.0
		Texas	20.0
		Wisconsin	238.0
C. E. Cast Equipment, Cleveland, Ohio	32,167	California	300.0
		Illinois	700.0
		Michigan	2,000.0
		Ohio	28,000.0
		Wisconsin	1,000.0
American Air Filter, Louisville, Ky	1,905	Illinois	31.0
		Indiana	145.0
		Kentucky	1,200.0
		New Jersey	145.0
		New York	125.0
		Ohio	41.0
		Pennsylvania	109.0
Holcroft & Co., Livonia, Mich	23,120	Michigan	23,120.0

Soviet Purchases of U.S. Equipment and Services Supported by Eximbank Credits—Continued

[Dollar amount in thousands]

Soviet buyer	Project	Prime U.S. contractor and location	Total contract amount	Vendors/contractors/subsidiaries (by State)	Amounts
Stankoimport; Techmashimport	Tableware and dishware plant	Alliance Tool Co., Rochester, N.Y.	$6,893	Connecticut	$1,269.0
				Florida	43.0
				New Jersey	58.0
				New York	2,563.0
				Massachusetts	23.0
				Michigan	189.0
				Minnesota	2.0
				Wisconsin	200.0
				Mississippi	33.0
				Ohio	481.0
				Other	1,768.0
Techmashimport	Acetic acid plant	Lummus Co., Bloomfield, N.J.—Monsanto, St. Louis, Mo.	44,515	Kansas	700.0
				Missouri	5,500.0
				New Jersey	9,100.0
				New York	6,800.0
				Texas	600.0
				Other	18,600.0
Stankoimport	Tableware plant	Alliance Tool Co., Rochester, N.Y.	21,833	Arizona	353.0
				Connecticut	4,273.0
				Michigan	6,[illegible]82.0
				New Jersey	176.0
				New York	4,537.0
				Ohio	1,434.0
				Pennsylvania	602.0
				Other	4,290.0
Stankoimport	Transferline for machine flywheels	Giddings & Lewis, Fond Du Lac, Wis.	7,458	Connecticut	144.0
				Illinois	1,953.0
				Michigan	151.0
				Ohio	468.0
				Wisconsin	4,791.0

NOTES

All figures rounded.

The term "other" designates allocated funds where vendors have not yet been selected or where small vendors are from numerous States.

APPENDIX F-2

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 8, 1974.

Hon. RICHARD S. SCHWEIKER,
U.S. Senate, Washington, D.C.

DEAR SENATOR SCHWEIKER: Your letter of January 31, 1974, raises several questions concerning the participation of the Export-Import Bank (Eximbank) in transactions involving the Soviet Union. These questions arise primarily in view of section 2(b)(2) of the Export-Import Bank Act of 1945, as amended, which prohibits the Bank from guaranteeing, insuring or extending credits in connection with the purchase or lease of any product by a Communist country except in the case of any transaction which the President determines would be in the national interest and so reports to the Congress.

You state it to be your understanding that on October 18, 1972, President Nixon determined it to be in the national interest for Eximbank to extend credits to the Soviet Union. Subsequent to this Presidential determination, Eximbank has extended credits to the Soviet Union in numerous transactions, and the Bank has reported such transactions to the Congress. However, no separate determination of national interest for each individual transaction has been issued by the President.

You also indicate that Eximbank is presently considering an application by the Soviet Union for a $49.5 million direct loan to be invested in an energy development project in the Yakutsk area of Eastern Siberia, and that the Soviet Union is expected to seek additional Eximbank credits to finance a $7.6 billion North Star energy development project in Western Siberia.

In consideration of the foregoing matters, you request our response to the following specific questions:

(1) In view of the restrictions contained in the Export-Import Bank Act of 1945, as amended, has the Bank acted in compliance with applicable law in extending credit to the Soviet Union in the absence of individual Presidential determinations, submitted to Congress, to the effect that each such transaction is in the natioanl interest?

(2) Regardless of the legality of prior loans, in view of the present American energy crisis, can the Eximbank legally extend credit to the Soviet Union for the pending Yakutsk energy development project in the absence of a specific Presidential determination, submitted to Congress, that such transaction is in the national interest?

(3) What is the total amount of Eximbank funds presently outstanding in loans, guarantees or insurance to the Soviet Union, and what is the total amount of Federal funds presently committed to energy research and development in the United States?

As you indicate, the President made a determination concerning extension of Eximbank credits to the Soviet Union on October 18, 1972. The full text of this determination, as published at 37 F.R. 22573 (October 20, 1972), is as follows:

THE WHITE HOUSE,
Washington, October 18, 1972.

"I hereby determine that it is in the national interest for the Export-Import Bank of the United States to guarantee, insure, extend credit and participate in the extension of credit in connection with the purchase or lease of any product or service by, for use in, or for sale or lease to the Union of Soviet Socialist Republics, in accordance with Section 2(b)(2) of the Export-Import Bank Act of 1945, as amended.

[signed] RICHARD NIXON"

This determination was reported to the Congress on the date it was made. See Congressional Record for October 18, 1972, H10409 (Executive Communication No. 2432). Obviously this document evidences a determination that it is in the national interest to extend credits to the Soviet Union as a general matter, and without reference to any particular transaction or transactions.

Your first question, as to the validity of such a general determination, requires consideration of the legislative history of section 2(b)(2) of the Export-Import Bank Act and prior appropriation act provisions.

Section 2(b)(2) of the Export-Import Bank Act of 1945, as amended, 12 U.S.C. 635(b)(2), provides, quoting from the United States Code:

"The Bank in the exercise of its functions shall not guarantee, insure, or extend credit, or participate in any extension of credit—

"(A) in connection with the purchase or lease of any product by a Communist country (as defined in section 2370(f) of Title 22), or agency or national thereof, or

"(B) in connection with the purchse or lease of any products by any other foreign country, or agency, or national thereof, if the product to be purchased or leased by such other country, agency, or leased by such other country, agency, or national is, to the knowledge of the Bank, principally for use in, or sale or lease to, a Communist country (as so defined).

"except that the prohibitions contained in this paragraph shall not apply in the case of any transaction which the President determines would be in the national interest if he reports that determination to the Senate and House of Representatives within thirty days after making the same."

The above-quoted provision was added by section 1(c) of the act approved March 13, 1968, Pub. L. 90-267, 82 Stat. 47, 48. The 1968 act was in this regard based upon a somewhat similar limitation which had been carried in appropriation acts for prior years.

The appropriation act limitation first appeared in the Foreign Aid and Related Agencies Appropriation Act, 1964, approved January 6, 1964, Pub. L. 88-258, 77 Stat. 857, 863, as follows:

"None of the funds made available because of the provisions of this Title shall be used by the Export-Import Bank to either guarantee the payment of any obligation hereafter incurred by any Communist

country (as defined in section 620(f) of the Foreign Assistance Act of 1961, as amended) or any agency or national thereof, or in any other way to participate in the extension of credit to any such country, agency, or national, in connection with the purchase of any product by such country, agency, or national, except when the President determines that such guarantees would be in the national interest and reports each such determination to the House of Representatives and the Senate within 30 days after such determination."

The same language was included in the appropriations acts for 1965 (78 Stat. 1022), 1966 (79 Stat. 1008), 1967 (80 Stat. 1024–25), and 1968 (81 Stat. 943).

The appropriation act limitation, as originally enacted in 1964, represented a compromise between proponents of a flat prohibition against Eximbank participation in any transactions involving Communist countries, led by Senator Mundt and Representative Findley, and those members who insisted upon according discretion to the President. However, the legislative history indicates that this language was intended to require a specific Presidential determination for each transaction to be exempted from the prohibition. Thus Senator Mundt commented as follows in a statement appearing at 109 Cong. Rec. 25619:

"* * * The compromise language which we finally developed in the conference report and which has been adopted by the House is a significant and important policy recommendation by Congress and a firm expressional intent. It contains the same specific prohibition against extension and guarantees of credit to the Communist nations contained in S. 2310 but it provides an escape clause to be used by the President of the United States only—and I repeat only—when he himself finds in the case of each proposed credit transaction that he believes it to be in the national interest * * *.

* * * * * * *

"I am confident there are many in Congress and throughout the country—and I include myself among them—who will want to scrutinize each such transaction most intently and carefully if it should actually eventuate and be authorized. * * *

"Thus, I am well satisfied with the policy declaration and the specific prohibition in this matter contained in the conference report and by the work accomplished by the House-Senate conference committee in writing into this foreign aid appropriations bill a prohibition which can be voided only by specific Presidential action to be publicly reported in each case within 30 days to both House of Congress."

The same intent seems to be manifested during House consideration of the conference report. Mr. Passman observed:

"* * * The so-called Mundt amendment which was agreed to by the conferees requires two things specifically: The President must determine that financing such assistance by the Export-Import Bank is necessary, and the President must report each such determination * * *

* * * * * * *

"* * * If, for example, there are 20 such determinations, the President will report 20 different times * * *." 109 Cong. Rec. 25416–17.

In response to an observation that the President had already in effect determined that sales of wheat and other agricultural products to the Soviet Union were in the national interest, Mr. Rhodes stated:

"Of course, the gentleman realizes that a new determination has to be made with each transaction under the terms of this amendment?" *Id.* at 25418.

As noted previously, the present statutory provision was enacted in 1968 by Public Law 90-267. The report on the 1968 legislation by the Senate Committee on Banking and Currency noted the similar provision contained in prior appropriation acts, but pointed out:

" * * * the committee provision goes beyond the existing provision in two respects. First, as indicated, *it would require a determination of national interest by the President in the case of indirect as well as direct transactions* with Communist countries. Second, the provision becomes a part of the Bank's statutory charter and does not need to be adopted each year by the Congress as in the case with the appropriation act." S. Rept. No. 493, 90th Cong., 1st sess., 4. (Italic supplied.)

The conference report commented with reference to the provision enacted:

"The Bank is also prohibited from participating in credit transactions in connection with the purchase or lease of any product by a Communist country * * * *except after a Presidential determination communicated to Congress within 30 days after it is made, that the transaction would be in the national interest.*" H. Rept. No. 1103, 90th Cong. 2d sess., 4. (Italic supplied.)

Finally, in explaining the conference version of the 1968 legislation, Senator Muskie reiterated that section 2(b)(2) was patterned after the similar limitation which had been carried in appropriation acts. 114 Cong. Rec. 3836.

Thus, the language of section 2(b)(2) of the present act, together with its legislative history, clearly requires a separate determination for each transaction. Your first two questions are therefore answered in the negative.

With reference to your third question, the materials enclosed herewith indicate the present status and extent of Eximbank participation in transactions involving the Soviet Union. Finally, a report to the President dated December 1, 1973, from the Chairman of the Atomic Energy Commission indicated the following obligations for Federal energy research and development for fiscal years 1973 and 1974:

[In millions of dollars]

Program element	Actual, 1973	Planned 1974
Conserve energy	$52.8	$62.3
Increase domestic production of oil and gas	20.0	19.5
Substitute coal for oil and gas	88.8	167.2
Validate nuclear option	395.8	517.3
Exploit renewable energy sources	82.8	123.0
Total	640.2	889.3

We have not audited or verified the above data. The President's fiscal year 1975 budget contains $1.5 billion for direct energy research and development.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

29-849--74----5

APPENDIX F-3

Memorandum to the Board of Directors of the Export-Import Bank of the United States

Re Legality of Actions taken by the Export-Import Bank of the United States under Section 2(b)(2) of the Export-Import Bank Act of 1945, as amended.

From: J. E. Corette III, General Counsel.

On March 8, 1974, the Comptroller General of the United States rendered an advisory opinion to Senator Schweiker that Eximbank had acted illegally in extending credit to the U.S.S.R. by failing to obtain a Presidential Determination that each transaction involving the extension of Eximbank credit to the U.S.S.R. was in the national interest. The same reasoning led him to state that Eximbank could not legally extend credit to the U.S.S.R. for the pending Yakutsk energy development in the absence of a specific Presidential Determination that such transaction would be in the national interest.

This opinion would perforce apply to transactions previously concluded not only with the U.S.S.R. but also with Yugoslavia, Romania, Hungary, Bulgaria, Czechoslovakia, and Poland.

It is the opinion of the General Counsel for Eximbank that the above-mentioned opinion of the Comptroller General is without merit. It is the further opinion of the General Counsel for Eximbank that Eximbank has acted at all times completely within the law in extending credits, guarantees, and insurance relating to U.S. exports to the Eastern European countries mentioned above and that Eximbank can continue to support U.S. exports to Yugoslavia, Romania, the U.S.S.R. and Poland pursuant to the Presidential Determinations that have been made since 1968.

Legal Opinion

In Title III of the Foreign Aid and Related Agencies Appropriation Act for fiscal year 1964, Congress prohibited Eximbank from supporting exports to Communist countries unless the President issued a Determination that such support was in the national interest. That restriction was enacted on January 6, 1964 after much controversial and inconclusive debate in both Houses of Congress. It reads as follows:

> None of the funds made available because of the provisions of this title shall be used by the Export-Import Bank to either guarantee the payment of any obligation hereafter incurred by any Communist country (as defined in section 620[f] of the Foreign Assistance Act of 1961, as amended) or any agency or national thereof, or in any other way to participate in the extension of credit to any such country, agency, or national, in connection with the purchase of any product by such country, agency,

or national, except when the President determines that such guarantees would be in the national interest and reports each such determination to the House of Representatives and the Senate within 30 days after such determination.

This provision does not specify whether the Presidential Determinations foreseen thereunder must be made for each transaction or whether they may be made on a country basis. Also, the legislative history does not specify which type of Determination was required or contemplated.

A statement by Senator Mundt (Congressional Record, December 30, 1963, 25618–19) could be construed as requiring something like a "case-by-case" determination by the President. Senator Mundt declared that the above provision is:

> * * * to be used by the President of the United States only—and I repeat only—when he himself finds in the case of each proposed credit transaction that he believes it to be in the national interest of the United States to guarantee * * *

Senator Mundt's statement went on to say:

> * * * I am confident there are many in Congress and throughout the country—and I include myself among them—who will want to scrutinize each such transaction most intently and carefully if it should actually eventuate and be authorized * * *.

On the other hand, statements made by other Senators would seem to indicate that they did not expect detailed, "case-by-case" Determinations by the President. Senator Pastore remarked (p. 25626):

> * * * The position of the President of the United States is that the provision does not belong in the bill, but if we insist on putting anything in there, he has said, "At least give me the authority as President of the United States to say whom in the national interest it would be proper to extend credit." That is all it amounts to.
>
> Mr. HOLLAND. That is exactly correct. This is the basis upon which the conference compromise was reached.

Senator Morse (p. 25628) expressing his opposition to the bill and to this provision in particular stated that:

> * * * I do not think that the language that has come back from the conference means anything more or less than empty language. * * * if the President thinks, in the national interest, the credit should be extended, he in effect can extend it. All he has to do is send a report to the Congress * * *.

While Congressman Rhodes made a statement similar to those of Senator Mundt, most of the statements in the House reflect the belief on the part of the Congressmen that the President had already concluded that the extension of Export-Import Bank guarantees was in the national interest.

Congressman Findley, a bitter opponent of trade with Communist countries, warned Congress that the President would interpret the proposed provision so as to make determinations on a country basis:

> The President gets a blank check. He sets the policy, not the Congress.
>
> Examine it. Look at the words in this new proposal: the President must determine it is in the national interest before taxpayers are forced to guarantee credit for the Communists. But do not hold your breath. The President has already made

the determination. In a letter to the majority leader of the other body, dated yesterday, the President speaking of sales to Communist countries, said, and I quote:

"In my judgment, sales of wheat and other farm commodities, on reasonable terms, are now plainly in the national interest of the United States."

He said "national interest." The very same phrase that appears in this proposed language. (p. 25409)

Congressman Mahon, more sympathetic to the Administration's proposed actions, pointed out that any limitations imposed by Congress must be considered in light of the fact that the President has definite Constitutional responsibilities with respect to the conduct of foreign affairs. And for that reason, he wanted to insure that Congress gave the President maximum freedom in acting under the exception to the prohibition on Eximbank support of transactions issued to Communist countries:

Mr. Speaker, the plain truth is that probably the greatest job that our new President has is handling our relationship with the Soviet Union. Many would agree that probably this is his No. 1 job. Under the Constitution it is peculiarly within his jurisdiction. It is his responsibility under our system to represent our country in international matters.

As has just been pointed out so ably by the gentleman from Arizona [Mr. Rhodes] under the existing law the President has every right to make these negotiations relating to sales of wheat to the Soviet Union.

* * * The question is whether in the beginning of the period of service of the new President we will give him the flexibility which he has requested in the handling of foreign affairs. I for one, here in the beginning of his administration am willing to give him this flexibility * * * We ought not to deny the President the flexibility which he has requested in an area where he has a special constitutional responsibility.

The President did not say he was going to use the Export-Import Bank. He asked that he not be denied the flexibility of using the Export-Import Bank. So, Mr. Speaker, I think there is room here for * * * us to accept the compromise represented by this conference report* * *. I think we can support the conference report and support our President and give him the full opportunity to be our spokesman in this important matter involving foreign affairs. (*Id.*, p. 25419)

Congressman Thomas emphasized that the real issue behind the proposed provision was the conduct of the foreign policy of the United States.

This is a matter of the conduct of our foreign affairs * * *.

Let us not tie the hands of our President (*Id.*, pp. 25419–25420)

Thus, with the exceptions of Senator Mundt and Congressman Rhodes, the Senators and Congressmen who made statements on the subject did not foresee detailed "case-by-case" determinations. It would appear that Congress considered trade with Communist countries to fall within the sphere of foreign policy to be conducted by the President and accordingly, expected the President to have broad latitude in deciding what kind of determinations to issue with

respect to Communist countries. As the Supreme Court stated in *F.C.C.* v. *RCA Communications, Inc.*, 346 U.S. 86:

> * * * the statutory standard no doubt leaves wide discretion and calls for imaginative interpretation. Not a standard that lends itself to application with exactitude, it expresses a policy * * * that is as concrete as the complicated factors for judgment in such a field of delegated authority permit. (at p. 90)

Almost immediately following enactment of the 1964 Appropriation Act, President Johnson issued three Determinations. The first stated:

> In compliance with Title III of the Foreign Aid and Related Agencies Appropriation Act of 1964, this is to inform you [President Pro Tempore of the Senate/Speaker of the House] that I have determined that it is in the national interest for the Export-Import Bank to issue guarantees in connection with the sale of United States products and services to Yugoslavia. The Bank will report the individual guarantees to the Congress as they are issued. (February 4, 1964)

A nearly identical Determination related to United States agricultural products to the U.S.S.R., Bulgaria, Czechoslovakia, Hungary, Poland, and Romania (February 4, 1964); and a third Determination referred to United States products and services (in addition to agricultural products) to Romania which were to be sold on short and medium term credits (June 15, 1964). On October 7, 1966, the President further determined that it was in the national interest for Eximbank to issue guarantees in connection with the sale to Czechoslovakia, Poland, Hungary and Bulgaria of United States products and services on short and medium term credit.

All of these Determinations were immediately reported to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. In the same manner Eximbank also promptly notified Congress of each transaction entered into pursuant to these determinations. No objections were ever raised to any Presidential Determination or any transaction entered into pursuant thereto. With the full knowldege of these procedures and after annual Eximbank testimony during its budget hearings, Congress continued to re-enact the identical provision in each Foreign Assistance and Related Agencies Appropriation Act through fiscal year 1968. Such Congressional action clearly constitutes implied approval of the President's actions in making Determinations on a country basis. In a case involving the Commissioner of Internal Revenue, the Supreme Court stated in *Douglas v. Commissioner*, 322 U.S. 275 that:

> Congress has enacted numerous revenue acts since that time and has seen no occasion to change the statutory delegation of authority to the Commissioner of Internal Revenue which is the basis of this longstanding regulation. This evidences that [the regulations] are within the rule-making authority which was intended to be granted to the Commissioner * * * (at p. 28).

Moreover, the very consistency of the President in issuing every Determination on a country basis should be accorded great weight in any interpretation of the provisions under which the Determinations were made. As the Supreme Court held in *Norwegian Nitrogen Co.* v. *U.S.*, 288 U.S. 294, 315:

Administrative practice, consistent and generally unchallenged, will not be overturned except for very cogent reasons * * *.

In 1968, rather than including the Communist country limitation in the annual Foreign Assistance and Related Agencies Appropriation Act, Congress added Section 2(b)(2) to the Export-Import Bank Act of 1945, as amended:

(2) The Bank in the exercise of its functions shall not guarantee, insure, or extend credit, or participate in any extension of credit (A) in connection with the purchase or lease of any product by a Communist country (as defined in Section 620(f) of the Foreign Assistance Act of 1963, as amended) or agency or national thereof; or (B) in connection with the purchase or lease of any product by any other foreign country, or agency, or national thereof, if the product to be purchased or leased by such other country, agency, or national is, to the knowledge of the Bank, principally for use in, or sale or lease to, a Communist country (as so defined), except that the prohibitions contained in this paragraph shall not apply in the case of any transaction which the President determines would be in the national interest if he reports that determination to the Senate and House of Representatives within thirty days after making the same.

This provision was not intended to affect the nature of Presidential Determinations issued in connection with Communist countries As Senator Tower declared when he introduced S. 3766, which essentially became Section 2(b)(2):

The bill I introduce today would not only prohibit a line of Eximbank credit to Communist countries, but it also would prohibit the use of Eximbank credit by non-Communist countries for purchase of U.S. material to be transshipped for use in Russia.

There is the exception in this bill * * * whereby the President of the United States could approve either a line of credit to a Communist country, or the benefits derived from a line of credit made to a non-Communist country by the Eximbank, whenever the President determines that such approval would be in the national interest.

He would be required, as he now is under the Foreign Assistance and Related Agencies Appropriation Act, to report such determinations to the Senate and House of Representatives within 30 days after said determination. (Cong. Record, S12419, May 11, 1967.)

In hearings before the Subcommittee on International Finance of the Senate Committee on Banking and Currency in 1967, he added:

* * * What we have attempted here is to make the Presidential discretion consistent throughout. That is to say, the Presidential discretion is now required for any extension of credit to Communist contries. And all we seek to do here is to tighten up the guidelines a bit so that it still must be at the President's discretion if a credit is extended to one country, which ultimately will benefit a Communist country. (Hearings on S. 1155 before the Subcommittee on International Finance, Senate Committee on Banking and Currency, 90th Cong., 1st Sess. [1967], p. 37)

Senator Tower also asked Harold Linder, then Chairman of Eximbank, the following question:

> It is true, is it not, that the only possibility of Communist country use of Export-Import Bank credit must be determined as a policy by the President of the United States and then he must advise the Congress of such determination 30 days following the determination?
>
> Mr. Linder. Yes. As stipulated in the Foreign Assistance and Related Agencies Appropriation Act, the President must make a determination that it is in the national interest for the Bank to assist in financing exports to a Communist country and to report such determination to the Congress within 30 days. (*Id.* p. 49)

On the basis of these statements, it seems clear that Senator Tower envisioned the President acting under Section 2(b)(2), not on a case-by-case basis, but on a country basis as President Johnson had done on four occasions under the respective appropriations statutory sections which were the predecessors to Section 2(b)(2). Such an interpretation was not contradicted at any time by the Senate or the House. In fact, most statements were directed at pointing out that Section 2(b)(2) was intended to be little more than a restatement of the provisions in prior appropriation acts, and that the only change from the latter provisions was to include within the purview of the former not only direct dealings with Communist countries, but also the additional situation of "an export purchased by or shipped to a non-Communist country which, in turn, sells the product to a Communist country." (Report of the Subcommittee on International Finance, Senate Committee on Banking and Currency, S. Rept. 493, 90th Cong., 1st Sess. [1967], p. 3)

The exact language of Section 2(b)(2) resulted from the House-Senate conference on the legislation. There is nothing in the Conference Report to indicate that the conference language was intended to be a significant change in substance from S. 1766. Senator Muskie in explaining the conference version on the floor of the Senate again asserted, "This amendment, of course, is patterned after a similar limitation which has been included annually for the past 5 years in the Export-Import Bank portion of the Foreign Assistance and Related Agencies Appropriation Act." (Cong. Record. S3836, February 21, 1968)

The statements set forth above, coupled with the absence of any Congressional objections to the way in which the President had been issuing determinations under the Previous Appropriation Acts, provide convincing evidence that enactment of Section 2(b)(2) should be construed as approval of the issuance of Presidential determinations on a country baiss. The Supreme Court has stated, ". . . regulations and interpretations which are continued without substantial change and applying to unamended or *substantially re-enacted statutes* are deemed to have received Congressional approval and have the effect of law" [Emphasis added]. See *Helvering* v. *Winmill*, 305 U.S. 79; *Boehm* v. *Commissioner*, 326 U.S. 287.

Despite the elimination of the specific limitation from the Foreign Assistance and Related Agencies Appropriation Acts commencing in fiscal year 1969, the Appropriations Committees continued to express deep interest in Presidential determinations with respect to

Communist countries. Perhaps the most explicit recognition by a Committee of the President's power to make country determinations came in a query by Congressman Passman to Mr. Linder as to the effect of a Presidential determination for a specific country:

> Mr. PASSMAN. Without any further Presidential determination, you can negotiate loans for other commodities; can you not?
>
> Mr. LINDER. With that particular country; yes.
>
> (Hearing before House Subcommittee on Foreign Operations Committee on Appropriations, 90th Cong., 2nd Sess. [1969], p. 201)

At the same time that Section 2(b)(2) was added to the statutory Eximbank Charter another more restrictive provision, the so-called Fino Amendment, was enacted into law on March 13, 1968, as Section 2(b)(3) of the Export-Import Bank Act:

> (3) The Bank shall not guarantee, insure, or extend credit, or participate in the extension of credit in connection with the purchase of any product, technical data, or other information by a national or agency of any nation—
>
> (A) which engages in armed conflict, declared or otherwise, with armed forces of the United States; or
>
> (B) which furnishes by direct governmental action (not including chartering, licensing, or sales by non-wholly-owned business enterprises) goods, supplies, military assistance, or advisors to a nation described in subparagraph (A); nor shall the Bank guarantee, insure, or extend credit, or participate in the extension of credit in connection with the purchase by any nation (or national or agency thereof) of any product, technical data, or other information which is to be used principally by or in a nation described in subparagraph (A) or (B).

Only Yugoslavia of the Communist countries was held not to fall within the purview of this Section 2(b)(3) and on May 7, 1968 President Johnson made the necessary Determination required by Section 2(b)(2) that any transaction with Yugoslavia was in the national interest. Since that time Eximbank, financing of transactions to Yugoslavia pursuant to this 1968 Determination has been discussed with the Congressional Appropriations Committees.

Congress modified Section 2(b)(3) of the Export-Import Bank Act of 1945, as amended, on August 17, 1971, by deleting subsection (B). As a result, the President was then able to make additional national interest Determinations under Section 2(b)(2).

Congress at that time expressed an interest in determining just what actions the President might take thereunder. Phillip Trezise, Assistant Secretary of State for Economic Affairs, reported to the Subcommittee on International Trade of the House Banking and Currency Committee that:

> I am authorized * * * to say that should Congress modify the Fino Amendment to give the President additional discretionary authority, the President would consider a waiver of the additional prohibition in Section 2(b)(2) of the Act with respect to Communist countries, only for Romania under present circumstances. (Hearings before the Subcommittee on International Trade, House Banking and Currency Committee, 92nd Congress, 1st Session [1971], p. 597)

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Congressman Ashley questioned Mr. Trezise:

> Would it not be the hope that this particular kinship that we seem to have for Romania might be extended to Poland, Czechoslovakia, and others in the near future? (*Id.*, p. 601)

In the most explicit statement of the President's power under Section 2(b)(2), the House Committee report recommending modification of Section 2(b)(3) declared that granting Eximbank financing for export transactions to Eastern Europe "would be subject to Presidential determination that a particular transaction or *trade with a specific Communist country would be in the national interest.*" [Emphasis added] (H. Rept. No. 92–303, 92nd Congress, 1st Session, [1971] pg. 10)

Congress in 1971 foresaw the President making Determinations under Section 2(b)(2) on a country basis. Thereafter, President Nixon followed President Johnson's precedent of making Determinations on a country basis and issued the following Determination on November 22, 1971:

> I hereby determine that it is in the national interest for the Export-Import Bank of the United States to guarantee, insure, extend credit and participate in the extension of credit in connection with the purchase or lease of any product or service by, for use in, or for sale or lease to the Socialist Republic of Romania, in accordance with Section 2(b)(2) of the Export-Import Bank Act of 1945, as amended.

On October 18, 1972 President Nixon made an identical Determination in favor of the Union of Soviet Socialist Republics and another identical Determination on November 8, 1972 in favor of the Polish People's Republic. Immediately following each Determination, President Nixon reported the same to the Senate and House of Representatives.

All loans, guarantees and insurance extended to any of the foregoing Communist countries have been reported in a timely manner to the Senate and the House of Representatives by Eximbank. (See Exhibit A for a list of the numbers of transactions and the amounts thereof)

Thus, for ten years, since the enactment of the fiscal year 1964 appropriation act, the President has acted consistently in issuing Determinations on a country basis. At the same time, Congress has been fully informed of all Presidential Determinations and transactions entered into pursuant to them. At no time has Congress as a body raised objections to any Presidential Determination made pursuant to Section 2(b)(2), and not until March 8, 1974, has any individual member of Congress questioned the legality of any such Determination or any Eximbank transaction authorized thereunder.

Furthermore, throughout this entire period, the Comptroller General has issued a Certificate annually to the Board of Directors of Eximbank based upon a review of all transactions entered into by Eximbank including transactions entered into pursuant to the Presidential Determinations discussed above. Among the materials specifically requested by the Comptroller General during his audit were the Presidential Determinations themselves. Every Certificate has stated that Eximbank's financial operations were conducted "in conformity . . . with applicable Federal laws" (with the exception of a number of comments totally unrelated to the legality of Eximbank authorizations for trans-

actions entered into pursuant to the Presidential Determinations discussed above). (See Exhibit B.) Five of these Certificates have been signed by the current Comptroller General.

CONCLUSION

Based upon analysis of the statutes mentioned above, the legislative history relating to enactment of these statutes, and the interpretation of these statutes which has been consistently followed since enactment of them, it is the opinion of the undersigned that the President possesses the authority under Section 2(b)(2) of the Export-Import Bank Act of 1945, as amended, to issue Determinations on a country by country basis that it is in the national interest for Eximbank to provide financial support for U.S. export sales to Communist countries.

Therefore, I conclude that the Bank has acted legally in all transactions entered into to date in Yugoslavia, Romania, the U.S.S.R., Poland, Bulgaria, Czechoslovakia, and Hungary, and that pursuant to the respective Presidential Determinations which have been issued since 1968, Eximbank can continue to authorize transactions in Yugoslavia, Romania, the U.S.S.R., and Poland.

J. E. CORETTE III,
General Counsel.

EXHIBIT A

CREDITS, GUARANTEES, AND INSURANCE AUTHORIZED TO COMMUNIST BLOC COUNTRIES, JULY 1, 1963, THROUGH FEB. 29, 1974

	Number of new authorizations	Amount authorized (thousands)
Fiscal year 1964:		
Hungary: Guarantees	1	$23,902
Yugoslavia:		
Guarantees	4	13,873
Short-term shipments		57
Fiscal year 1965:		
Hungary: Guarantees	1	471
Poland: Guarantees	1	4,151
Romania: Guarantees	1	19,400
Yugoslavia:		
Guarantees	14	3,574
Short-term shipments		46
Medium-term FCIA	1	88
Fiscal year 1966:		
Romania: Guarantees	([1])	600
Yugoslavia:		
Guarantees	14	50,055
Short-term shipments		40
Fiscal year 1967:		
Bulgaria: Guarantees	2	628
Hungary: Guarantees	1	16,996
Yugoslavia:		
Guarantees	16	7,800
Short-term shipments		57
Medium-term FCIA	7	1,224
Fiscal year 1968:		
Czechoslovakia: Short-term shipments		151
Hungary: Short-term shipments		81
Poland:		
Guarantees	1	64
Short-term shipments		17
Romania: Short-term shipments		10
Fiscal year 1968—Continued		
Yugoslavia:		
Guarantees	7	3,438
Medium-term FCIA	([1])	160
Short-term shipments		58
Fiscal year 1969:		
Hungary: Short-term shipments		4
Yugoslavia:		
Loans	3	15,520
Guarantees	16	3,645
Medium-term FCIA	1	67
Short-term shipments		169
Fiscal year 1970:		
Yugoslavia:		
Loans	1	5,245
Guarantees	21	10,712
Medium-term FCIA	8	1,521
Short-term shipments		611
Fiscal year 1971:		
Yugoslavia:		
Loans	7	33,991
Guarantees	38	49,250
Medium-term FCIA	13	6,532
Short-term shipments		1,302
Fiscal year 1972:		
Romania:		
Loans	1	1,192
Guarantees	10	8,618
Medium-term FCIA	4	1,219
Short-term shipments		1
Yugoslavia:		
Loans	69	48,943
Guarantees	97	83,542
Medium-term FCIA	18	15,406
Short-term shipments		5,158

See footnotes at end of table.

EXHIBIT A—Continued

CREDITS, GUARANTEES, AND INSURANCE AUTHORIZED TO COMMUNIST BLOC COUNTRIES, JULY 1, 1963, THROUGH FEB. 29, 1974—Continued

	Number of new authorizations	Amount authorized (thousands)
Fiscal year 1973:		
Poland:		
Loans	6	37,620
Guarantees	1	8,910
Romania:		
Loans	5	35,995
Guarantees	12	25,668
Medium-term FCIA	2	755
Short-term shipments		3,314
U.S.S.R.:		
Loans	3	101,224
Guarantees	2	50,625
Yugoslavia:		
Loans	30	41,667
Guarantees	63	68,423
Medium-term FCIA	17	5,467
Short-term shipments		4,378
Fiscal year 1974 thru Feb. 28, 1974:[2]		
Poland:		
Loans	13	56,485
Guarantees	1	486
Short-term shipments		29
Romania:		
Loans	5	6,596
Guarantees	4	3,869
Medium-term FCIA	1	18
Short-term shipments		29
U.S.S.R.:		
Loans	9	146,647
Guarantees	7	61,914
Fiscal year 1974 thru Feb. 28, 1974—Continued		
Yugoslavia:		
Loans	18	70,514
Guarantees	29	87,631
Medium-term FCIA	8	3,979
Short-term shipments		1,261
Recap:		
Bulgaria: Guarantees	2	628
Czechoslovakia: Short-term shipments		151
Hungary:		
Guarantees	3	41,069
Short-term shipments	1	77
Poland:		
Loans	19	94,105
Guarantees	4	13,611
Short-term shipments		46
Romania:		
Loans	11	43,783
Guarantees	27	58,155
Medium-term FCIA	7	1,992
Short-term shipments		3,354
Yugoslavia:		
Loans	121	187,640
Guarantees	312	353,544
Medium-term FCIA	73	34,444
Short-term shipments		12,948
U.S.S.R.:		
Loans	12	247,871
Guarantees	4	112,539
Total	[3] 595	1,205,957

[1] Increase.
[2] Activity on medium-term guarantees and insurance and short-term insurance is through Jan. 31, 1974 only.
[3] This number does not include more than 300 transactions that have taken place under the short-term insurance policies

EXHIBIT B

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., August 31, 1973.

To the Board of Directors,
Export-Import Bank of the United States.

The General Accounting Office has examined the statement of financial condition of the Export-Import Bank of the United States, a wholly owned Government corporation, as of June 30, 1973, and the related statement of income and expense and retained income reserve and the statement of changes in financial position for the year then ended. This examination, pursuant to the Government Corporation Control Act (31 U.S.C. 841), was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Section 2(c) (1) of the Export-Import Bank Act of 1945, as amended, calls for the establishment of "fractional reserves" of not less than 25 percent of the Bank's contractual liability on outstanding guarantees and insurance. The views of the General Accounting Office and

the Bank on this section are set forth in note 1 to the financial statements.

The contingent liabilities reported by Eximbank as loan maturities sold subject to contingent repurchase commitments include participations in specific loans, in support of which Eximbank issued instruments called certificates of beneficial interest. The buyers of these instruments are not free to dispose of them except as permitted by the Eximbank, which also assumes fully the risk of default. Accordingly, we believe that such instruments should be considered as borrowing or financing transactions, which, if so handled on the Eximbank's financial statements, would increase the Eximbank's financial statements, would increase the Eximbank's total assets and liabilities by about $518 million as of June 30, 1973.

In our opinion, the accompanying financial statements, subject to our comments in the paragraph directly above, present fairly the financial position of the Export-Import Bank of the United States at June 30, 1973, and the results of its operations and the changes in financial position for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year and with applicable Federal laws.

ELMER B. STAATS,
Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., August 23, 1972.

To the Board of Directors,
Export-Import Bank of the United States.

The General Accounting Office has examined the statement of financial condition of the Export-Import Bank of the United States, a wholly owned Government corporation, as of June 30, 1972, and the related statements of income and expense and analysis of retained income reserve and source and application of funds for the year then ended. This examination, pursuant to the Government Corporation Control Act (31 U.S.C. 841), was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The interest and other financial expense reported by Eximbank include interest charges on a significant part of the borrowings from the U.S. Treasury at rates lower than the rate prevailing at the time the funds were borrowed. Had the Treasury charged Eximbank interest rates approximating the full cost of the funds, the Bank's interest and other financial expense would have been increased by about $9.9 and $11.9 million in fiscal years 1972 and 1971, respectively, and the net income from operations for the years then ended would have been correspondingly reduced.

We were advised by Eximbank officials that in the past these special borrowing arrangements were made with the Treasury to compensate, in part, for Eximbank's having financed its operations through the sale of participation certificates and certificates of beneficial interest and for Eximbank's having made certain relatively low-interest-rate loans,

all in furtherance of national policy. During the latter part of fiscal year 1971, the Eximbank and Treasury entered into a new agreement with regard to the borrowings, whereby such low-interest borrowings from Treasury are tied-in directly to the rate, term, and amount of the outstanding balances of those loans which Eximbank states have been made at concessionary terms in the national interest. The effect of the new agreement, however, eliminates only a portion of the concession given Eximbank on its low-cost borrowings from the Treasury. Because the interest rates on the loans made by Eximbank are less than the Treasury's cost of borrowing the funds, the Treasury will be absorbing that portion of the cost between its lending rate to Eximbank and the cost of obtaining the funds.

The net income reported by Eximbank is stated before any provision for losses that may be sustained on loans receivable and related accrued interest or on guarantees and insurance. All accumulated net income, after dividends, has been reserved as a provision for future contingencies, defaults, or claims. (See note 2 to financial statements.)

The contingent liabilities reported by Eximbank as loan maturities sold subject to contingent repurchase commitments include participations in specific loans, in support of which Eximbank issued instruments called certificates of beneficial interest. The buyers of these instruments are not free to dispose of them except as permitted by the Eximbank, which also assumes fully the risk of default. Accordingly, we believe that such instruments should be considered as borrowing or financial transactions, which, if so handled on the Eximbank's financial statements, would increase the Eximbank's total assets and liabilities by about $415 million as of June 30, 1972.

In our opinion, the accompanying financial statements, subject to our comments in the paragraph directly above, present fairly the financial position of the Export-Import Bank of the United States at June 30, 1972, and the results of its operations and the source and application of its funds for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year and with applicable Federal laws.

ELMER B. STAATS,
Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., August 17, 1971.

The BOARD OF DIRECTORS,
Export-Import Bank of the United States.

The General Accounting Office has examined the statement of financial condition of the Export-Import Bank of the United States, a wholly owned Government corporation, as of June 30, 1971, and the related statements of income and expense and analysis of retained income reserve and source and application of funds for the year then ended. This examination, pursuant to the Government Corporation Control Act (31 U.S.C. 841), was made in accordance with generally accepted auditing standards and accordingly included such tests of the

accounting records and such other auditing procedures as we considered necessary in the circumstances.

The interest and other financial expense reported by Eximbank include interest charges on a significant part of the borrowings from the U.S. Treasury at rates lower than the rate prevailing at the time the funds were borrowed. Had the Treasury charged Eximbank interest rates approximating the full cost of the funds, the Bank's interest and other financial expense would have been increased by about $11.9 and $16.8 million in fiscal years 1971 and 1970, respectively, and the net income from operations for the years then ended would have been correspondingly reduced.

During our fiscal year 1970 audit we were advised by Eximbank officials that these special borrowing arrangements were made with the Treasury to compensate, in part, for Eximbank's having financed its operations through the sale of participation certificates and certificates of beneficial interest and for Eximbank's having made certain relatively low interest rate loans, all in furtherance of national policy. During the latter part of fiscal year 1971, the Eximbank and Treasury entered into a new agreement with regard to the borrowings whereby such low-interest borrowings from Treausury are tied-in directly to the rate, term, and amount of the outstanding balances of those loans which Eximbank states have been made at concessionary terms in the national interest. The effect of the new agreement, however, eliminates only a portion of the concession given Eximbank on its low-cost borrowings from the Treasury. Because the interest rates on the loans made by Eximbank are less than the Treasury's cost of borrowing the funds, the Treasury will be absorbing that portion of the cost between its lending rate to Eximbank and the cost of obtaining the funds.

The net income reported by Eximbank is stated before any provision for losses that may be sustained on loans receivable and related accrued interest or on guarantees and insurance. All accumulated net income, after dividends, has been reserved as a provision for future contingencies, defaults, or claims. (See note 2 to financial statements.)

The contingent liabilities reported by Eximbank as loan maturities sold subject to contingent repurchase commitments include participations in specific loans, in support of which Eximbank issued instruments called certificates of beneficial interest. The buyers of these instruments are not free to dispose of them except as permitted by the Eximbank which also assumes fully the risk of default. Accordingly, we believe that such instruments should be considered as borrowing or financing transactions, which, if so handled on the Eximbank's financial statements, would increase the Eximbank's total assets and liabilities by about $540 million as of June 30, 1971.

In our opinion, the accompanying financial statements, subject to our comments in the paragraph directly above, present fairly the financial position of the Export-Import Bank of the United States at June 30, 1971, and the results of its operations and the source and application of its funds for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year and with applicable Federal laws.

ROBERT F. KELLER,
Acting Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., August 28, 1970.

The Board of Directors,
Export-Import Bank of the United States.

The General Accounting Office has examined the statement of assets and liabilities of the Export-Import Bank of the United States, a wholly owned Government corporation, as of June 30, 1970, and the related statements of income and expense and analysis of retained income reserve and source and application of funds for the year then ended. This examination, pursuant to the Government Corporation Control Act (31 U.S.C. 841), was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The interest and other financial expense reported by the Bank include interest charges on a significant part of the borrowings from the U.S. Treasury at rates lower than the rate prevailing at the time the funds were borrowed. Had the Treasury charged the Bank interest rates approximating the full cost of the funds, the Bank's interest and other financial expense would have been increased by about $16.8 and $6.9 million in fiscal years 1970 and 1969, respectively, and the net income from operations for the years then ended would have been correspondingly reduced.

We were advised by Bank officials that these special borrowing arrangements were made with the Treasury to compensate, in part, for the Bank's having financed its operations through the sale of participation certificates and certificates of beneficial interest, and for the Bank's having made certain relatively low interest rate loans, all in furtherance of national policy.

The net income reported by the Bank is stated before any provision for losses that may be sustained on loans receivable and related accrued interest or on guarantees and insurance. All accumulated net income, after dividends, has been reserved as a provision for future contingencies, defaults, or claims. (See note 2 to financial statements.)

The contingent liabilities reported by the Bank as loan maturities sold subject to contingent repurchase commitments include participations in specific loans, in support of which the Bank issued instruments called certificates of beneficial interest. The buyers of these instruments are not free to dispose of them except as permitted by the Bank which also assumes fully the risk of default. Accordingly, we believe that such instruments should be considered as borrowing or financing transactions, which, if so handled on the Bank's financial statements, would increase the Bank's total assets and liabilities by about $400 million as of June 30, 1970.

In our opinion, the accompanying financial statements, subject to our comments in paragraph 5 above, present fairly the financial position of the Export-Import Bank of the United States at June 30, 1970, and the results of its operations and the source and application of its funds for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year and with applicable Federal laws.

ROBERT F. KELLER,
Acting Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., September 10, 1969.

The Board of Directors,
Export-Import Bank of the United States.

The General Accounting Office has examined the statement of assets and liabilities of the Export-Import Bank of the United States, a wholly owned Government corporation, as of June 30, 1969, and the related statements of income and expense and analysis of retained income reserve and source and application of funds for the year then ended. This examination, pursuant to the Government Corporation Control Act (31 U.S.C. 841), was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The net income reported by the Bank is stated before any provision for losses that may be sustained on loans receivable and related accrued interest or on guarantees and insurance. All accumulated net income, after dividends, has been reserved as a provision for future contingencies, defaults, or claims. (See note 2 to financial statements.)

The contingent liabilities reported by the Bank as loan maturities sold subject to contingent repurchase commitments include participations in specific loans, in support of which the Bank issued instruments called Certificates of Beneficial Interest. The buyers of these instruments are not free to dispose of them except as permitted by the Bank which also assumes fully the risk of default. Accordingly, we believe that such instruments should be considered as borrowing or financing transactions, which, if so handled on the Bank's financial statements, would increase the Bank's total assets and liabilities by about $300 million as of June 30, 1969. These types of transactions were not significant in the previous year.

In our opinion, the accompanying financial statements, subject to our comments in paragraph 3 above, present fairly the financial position of the Export-Import Bank of the United States at June 30, 1969, and the results of its operations and the source and application of its funds for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year and with applicable Federal laws.

ELMER B. STAATS,
Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., September 12, 1968.

THE BOARD OF DIRECTORS,
Export-Import Bank of the United States:

The General Accounting Office has examined the statement of assets and liabilities of the Export-Import Bank of the United States, a wholly owned Government corporation, as of June 30, 1968, and the related statements of income and expense and analysis of retained income reserve and source and application of funds for the year then ended. This examination, pursuant to the Government Corporation Control Act (31 U.S.C. 841), was made in accordance with generally

accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The net income reported by the Bank is stated before any provision for losses that may be sustained on loans receivable and related accrued interest or on guarantees and insurance. All accumulated net income, after dividends, has been reserved as a provision for future contingencies, defaults, or claims. (See note 3 to financial statements.)

In our opinion, the accompanying financial statements present fairly the financial position of the Export-Import Bank of the United States at June 30, 1968, and the results of its operations and the source and application of its funds for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year and with applicable Federal laws.

ELMER B. STAATS,
Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., October 20, 1967.

THE BOARD OF DIRECTORS,
Export-Import Bank of Washington.

The General Accounting Office has examined the statement of assets and liabilities of the Export-Import Bank of Washington, a wholly owned Government corporation, as of June 30, 1967, and the related statements of income and expense and analysis of retained income reserve and source and application of funds for the year then ended. This examination, pursuant to the Government Corporation Control Act (31 U.S.C. 841), was made in accordance with generally accepted auditing standards, and it therefore included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The net income reported by the Bank is stated before any provision for losses that may be sustained on loans receivable and related accrued interest or on guarantees and insurance. All accumulated net income, after dividends, has been reserved as a provision for future contingencies, defaults, or claims. (See note 3 to financial statements.)

In our opinion the accompanying financial statements present fairly the financial position of the Export-Import Bank of Washington at June 30, 1967, and the results of its operations and the source and application of its funds for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year and with applicable Federal laws.

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., April 3, 1967.

The Board of Directors,
Export-Import Bank of Washington.

The General Accounting Office has made an audit of the Export-Import Bank of Washington, a wholly owned Government corporation, for the fiscal year ended June 30, 1966, pursuant to the Government Corporation Control Act (31 U.S.C. 841).

Our examination of the statement of assets and liabilities of the Bank as of June 30, 1966, and the related statement of income and expense for the year then ended, was made in accordance with generally accepted auditing standards and included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The Bank has discontinued the practice of disclosing, in a separate section of its statement of assets and liabilities, the several items making up the investment of the United States Government in the Bank. These items are now presented as liabilities, capital, and reserves. We do not concur in this change. The Bank is a wholly owned Federal corporation, and therefore we believe that all parts of the Government's investment should be classified and clearly labeled as such in the Bank's financial report.

The net income reported by the Bank is stated before any provision for losses that may be sustained on loans receivable and related accrued interest or on guarantees and insurance. All accumulated net income, after the payment of dividends, has been reserved as a provision for future losses and claims. We are unable to express an opinion on the adequacy of the amount reserved to meet future losses, because of the undeterminable factors affecting the status of the loans, guarantees, and insurance.

In our opinion, subject to the comments in the preceding two paragraphs, the accompanying statements of assets and liabilities and of income and expense present fairly the financial position of the Export-Import Bank of Washington at June 30, 1966, and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year and with applicable Federal laws.

ELMER B. STAATS,
Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., November 29, 1965.

To the President of the Senate and the Speaker of the House of Representatives:

Herewith is our report on the examination of financial statements of the Export-Import Bank of Washington, a wholly owned Government corporation, for fiscal year 1965. The report is submitted to the Congress pursuant to the Government Corporation Control Act (31 U.S.C. 841).

Our audit included an examination of the Bank's statement of financial condition as of June 30, 1965, and the related statements of income and expense and analysis of retained income reserve and of sources and application of funds for the year then ended. The examination was made in accordance with generally accepted auditing standards and included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. The asset due from Foreign Credit Insurance Association is based upon information furnished to the Bank by that Association. The records of the Association have been audited as of June 30, 1965, by a firm of independent public accountants, which has concluded that allocations of income and expenses between the Association and the Bank were reasonable and in accordance with the agreement in force.

The net income reported by the Bank is stated before any provision for future losses and claims that may be sustained on loans receivable or on guarantees and insurance. All accumulated net income, after the payment of dividends, has been reserved as a provision for future losses and claims. We are unable to express an opinion on the adequacy of the amount of the retained income reserved to meet future losses because of the undeterminable factors affecting the status of the loans, guarantees, and insurance.

In our opinion, subject to the explanation in the preceding paragraph, the accompany financial statements (schedules 1, 2, and 3) present fairly the financial position of the Export-Import Bank of Washington at June 30, 1965, and the results of its operations and the sources and application of its funds for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year and with applicable Federal laws.

Copies of this report are being sent to the President of the United States and to the President of the Export-Import Bank of Washington.

FRANK H. WEITZEL,
Acting Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., September 23, 1964.

THE BOARD OF DIRECTORS,
EXPORT-IMPORT BANK OF WASHINGTON:

The General Accounting Office has made an audit of the Export-Import Bank of Washington, a wholly owned Government corporation, for the fiscal year ended June 30, 1964, pursuant to the Government Corporation Control Act (31 U.S.C. 841). As required by this act, we will also issue an audit report to the Congress of the United States containing such comments and information as is deemed necessary to keep the Congress informed of the operations of the Bank.

Our examination of the statement of financial condition of the Bank as of June 30, 1964, and the related statements of income and expense and analysis of retained income reserve and of sources and application of funds for the year then ended was made in accordance with generally accepted auditing standards and included such tests of the

accounting records and such other auditing procedures as we considered necessary in the circumstances.

The net income reported by the Bank is stated before any provision for future losses that may be sustained on loans receivable or on guarantees and insurance. However, all accumulated net income, after the payment of dividends, has been reserved as a provision for future losses. We are unable to express an opinion on the adequacy of the amount reserved to meet future losses because of the undeterminable factors affecting the status of the loans, guarantees, and insurance.

In our opinion, subject to the comments in the preceding paragraph, the accompanying financial statements present fairly the financial position of the Export-Import Bank of Washington at June 30, 1964, and the results of its operations and the sources and application of its funds for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year and with applicable Federal laws.

JOSEPH CAMPBELL,
Comptroller General of the United States.

APPENDIX F-4

Opinion of the Attorney General of the United States

MARCH 21, 1974.

The PRESIDENT,
The White House.

DEAR MR. PRESIDENT: I have a letter of March 19, 1974, from Counsel to the President requesting, on your behalf, my opinion regarding a matter arising under the Export-Import Bank Act of 1945, 12 U.S.C. 635 ("the Act").

The Export-Import Bank ("the Bank") is an agency of the United States. It is authorized to do a general banking business in order to aid in financing and facilitating exports and imports between the United States and foreign countries. 12 U.S.C. 635(a). Enclosed with your request are opinions of the General Counsel of the Bank and of the Comptroller General. The two opinions reflect a disagreement concerning the meaning of section 2(b)(2) of the Act, 12 U.S.C. 635(b)(2). I understand that as a result of the Comptroller General's opinion various transactions have been suspended involving agreements made with foreign countries. Because of the significant role that the Bank plays in this country's trade dealings with the U.S.S.R. and certain eastern European countries and because of the importance that this Nation attaches to honoring its international commitments (*cf.* 42 Op. A.G. No. 28, p. 5), it is appropriate that I should undertake to resolve this conflict.

In general, the provision in question states that the Bank shall not guarantee, insure, or extend credit in connection with the purchase or lease of a product from a Communist country or for use in or sale to a Communist country. 12 U.S.C. 635(b)(2). At issue is the meaning of an exception to this prohibition. The exception, which appears at the end of section 2(b)(2), states that prohibition "shall not apply in the case of any transaction which the President determines would be in the national interest if he reports that determination to the Senate and House of Representatives within thirty days after making the same." The function of this provision is to keep the Congress appraised of transactions within the exception.

The Comptroller General takes the position that this provision requires a determination from the President for each separate transaction that the Bank engages in that involves trade with a Communist country as described in section 2(b)(2). His opinion was not addressed to the Bank nor did it make any demand of the Bank. However, a member of the Senate requested the opinion and sent it to the Bank, in his individual capacity, together with a request that it be followed. Thus, it is not clear to us what authority should be accorded this opinion. I find it unnecessary, however, to reach the question of the

Comptroller General's authority in this matter. The General Counsel of the Bank has demonstrated that the Bank has acted lawfully in following a practice of securing determinations by the President on a country by country basis under section 2(b)(2) of the Act, and in notifying the Congress both of these determinations and their application to particular transactions. For the reasons set forth below I concur with his conclusion.

What is now section 2(b)(2) of the Act had its origin in a series of riders to appropriations acts beginning in 1964. The original provision [1] prohibited the use of funds available to the Bank to guarantee any obligation incurred by a Communist country or to participate in any way in the extension of credit to a Communist country unless the President determined that the guarantee would be in the national interest. The main thrust of the Comptroller General's opinion is that a statement by Senator Mundt [2] and a brief remark in the House debate [3] on the 1964 rider determine the meaning of section 2(b)(2), added to the Act four years later in 1968.

I cannot accept this premise. Reliance on congressional debates is, of course, justified where it shows common agreement as to the purpose of legislation. *E.g.*, *United States* v. *City and County of San Francisco*, 310 U.S. 16, 22 (1940), and cases collected therein. Here, however, there is no basis for concluding that any such common agreement existed concerning the meaning of section 2(b)(2).

The record shows (109 Cong. Rec. 25618) that Sen. Mundt was not present at the time of the debate on this bill and that his statement was inserted in the record by Sen. Hruska and never actually delivered on the Senate floor. Although there was nothing wrong in doing this, the value of the statement as indicating common intent is certainly very small. This practice, of course, reduced or eliminated the possibility that Senators who held other views would reply to Senator Mundt or debate the point.[4] The actual Senate debate reveals only that if there was any agreed or common purpose it was that the President be given broad discretion to make determinations as to "when in the national interest it would be proper to extend credit." *E.g.*, 109 Cong. Rec. 25626 (Sens. Pastore and Holland).

In the House there was also a general realization that the provision conferred broad responsibility and flexibility on the President to set

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[1] "None of the funds made available because of the provisions of this Title shall be used by the Export-Import Bank to either guarantee the payment of any obligation hereafter incurred by any Communist country (as defined in section 620(f) of the Foreign Assistance Act of 1961, as amended) or any agency or national thereof, or in any other way to participate in the extension of credit to any such country, agency, or national, in connection with the purchase of any product by such country, agency, or national, except when the President determines that such guarantees would be in the national interest and reports each such determination to the House of Representatives and the Senate within 30 days after such determination." Foreign Aid and Related Agencies Appropriation Act, 1964, approved January 6, 1964, 77 Stat. 857, 863.

[2] "The compromise language which we finally developed in the conference report and which has been adopted by the House is a significant and important policy recommendation by Congress and a firm expression of congressional intent. It contains the same specific prohibition against extension and guarantees of credit to the Commuuist nations contained in S. 2310 but it provides an escape clause to be used by the President of the United States only—and I repeat only—when he himself finds in the case of each proposed credit transaction that he believes it to be in the national interest * * *.

I am confident there are many in Congress and throughout the country—and I include myself among them—who will want to scrutinize each such transaction most intently and carefully if it should actually eventuate and be authorized." 109 Cong. Rec. 25618.

[3] "Of course, the gentleman realizes that a new determination has to be made with each transaction under the terms of this amendment?" *Id.* at 25413 (Rep. Rhodes). A comment of Representative Passman is also cited, 109 Cong. Rec. 25417. However, it is not as specific.

[4] The statement was not inserted in the record at the place where debate on this particular provision appears in the record. The Senate debate on trade with Communist countries is at 109 Cong. Rec. 25625–28.

policy.[5] *E.g*, 109 Cong. Rec. 25409, 25417, 25419, 25421. The Comptroller General relies mainly on one brief sentence by Representative Rhodes for the conclusion that the President must approve each transaction. See note 3, *supra*. I do not find this persuasive.

There are other factors that appear to me to be more significant in interpreting Section 2(b)(2). Since the enactment of the 1964 Appropriation Act, and continuing to date, the President has followed a consistent practice of making determinations on a country by country basis rather than on a transaction by transaction basis. This practice is, of course, consistent with the notion that the President is responsible for determining the broad outlines of foreign policy but not for executing its individual details. See L. Henkin. *Foreign Affairs and the Constitution* 39 (Foundation Press, 1972). According to the Bank, all such determinations were reported to Congress. Equally important, Congress was promptly notified by the Bank of each separate transaction entered into pursuant to these determinations, so that the notice function of section 2(b)(2) was fully preserved. No objections were raised concerning any determination or individual transaction. Congress re-enacted the identical provisions each time it passed the Bank's appropriation for several years thereafter. Foreign Assistance and Related Agencies Appropriation Act, 78 Stat. 1022 (1964), 79 Stat. 1008 (1965), 80 Stat. 1024–25 (1966) and 91 Stat. 943 (1968).

Subsequently, in 1967, legislation was introduced by Senator Tower to place essentially the same requirement which had been written into the appropriation acts directly into the Bank's charter. His proposal eventually became section 2(b)(2). 113 Cong. Rec. 12418–19 (1967). There is no indication that Congress was motivated to change the existing administrative practice. The legislative history of the provision is somewhat ambiguous. *Export-Import Bank Act Amendments of 1967, Hearings before the Subcommittee on International Finance of the Senate Banking and Currency Committee on S. 1155*, 90th Cong., 1st Sess., p. 21, 44, 49 (1967). Moreover, the language of Section 2(b)(2) permits more than one possible interpretation on the issue raised by the Comptroller General. The practice of making determinations on a country by country basis continued, a fact of which Congress was aware.[6] To date, this is the uniform procedure that has been followed.

Mr. PASSMAN. Without any further Presidential determination, you can negotiate loans for other commodities; can you not?

Mr. LINDER. With that particular country; yes.

DURATION OF PRESIDENTIAL DETERMINATION

Mr. PASSMAN. Once the Presidential determination is made, that is almost the equivalent of a statute; isn't it?

Mr. LINDER. It is within the statute.

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[5] *E.g.*, 109 Cong. Rec. 25419 (Rep. Mahon): "The question is whether in the beginning of the period of service of the new President we will give him the flexibility which he has requested in the handling of foreign affairs. I for one, here in the beginning of his administration, am willing to give him this flexibility. He is able, informed, and experienced and he is going to be answerable to the American people. The correctness of his decision on these matters can be decided at a later date even perhaps at the ballot box. We ought not to deny the President the flexibility which he has requested in an area where he has a special constitutional responsibility."

[6] *E.g.*, H. Rep. No. 92-303, p. 10 (1971); *Foreign Assistance and Related Agencies Appropriations for 1969, Hearings before the Subcommittee on Foreign Operations of the House Appropriations Committee*, 90th Cong., 2d Sess., Part 1, p. 201.

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Given the fact that Section 2(b)(2) is unclear, I believe that we can accord great weight to the administrative practice, particularly where, as here, it represents the "contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion * * *." *Norwegian Nitrogen Co.* v. *United States*, 288 U.S. 298, 315 (1933). Moreover, as noted, during a ten-year period, Congress has enacted and re-enacted this provision in various forms without taking exception to the practice. The Supreme Court has held, under similar circumstances, that Congress can be considered to have approved the practice. *Douglas* v. *Commissioner*, 322 U.S. 275, 281 (1944); *Boehm* v. *Commissioner*, 326 U.S. 287, 291–92 (1945); *Helvering* v. *Winmill*, 305 U.S. 79, 83 (1938). I believe that the Court's reasoning applies here. Such an interpretation is consistent, of course, with the broad purpose of section 2(b)(2)—to engage the President in important and difficult policy questions involving trade with Communist countries. These are questions of particular significance at this time.

I thus conclude that the President and the Bank acted lawfully in making and following determinations on a country to country basis pursuant to Section 2(b)(2), and in notifying the Congress of each determination and transaction.

——— ———,
Attorney General.

APPENDIX G

U.S.S.R.-U.S. Transportation Agreement[1]

Signed June 19 in Washington, D.C., by USSR Foreign Minister Andrei A. Gromyko and U.S. Secretary of State William P. Rogers.

The Government of the United States of America and the Government of the Union of Soviet Socialist Republics;

Recognizing the important role played by safe and efficient transportation systems in the development of all countries;

Considering that the improvement of existing transportation systems and techniques can benefit both of their peoples;

Believing that the combined efforts of the two countries in this field can contribute to more rapid and efficient solutions of transportation problems than would be possible through separate, parallel national efforts;

Desiring to promote the establishment of long-term and productive relationships between transportation specialists and institutions of both countries;

In pursuance and further development between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on cooperation in the fields of science and technology of May 24, 1972, and in accordance with the agreement on exchanges and cooperation in scientific, technical, educational, cultural and other fields of April 11, 1972, and in accordance with the agreement on cooperation in the field of environmental protection of May 2, 1972;

Have agreed as follows:

Article 1

The parties will develop and carry out cooperation in the field of transportation on the basis of mutual benefit, equality and reciprocity.

Article 2

This cooperation will be directed to the investigation and solution of specific problems of mutual interest in the field of transportation. Initially, cooperation will be implemented in the following areas:

a. Construction of bridges and tunnels, including problems of control of structure stress and fracture, and special construction procedures under cold climatic conditions.

b. Railway transport, including problems of rolling stock, track and roadbed, high-speed traffic, automation, and cold-weather operation.

c. Civil aviation, including problems of increasing efficiency and safety.

[1] Source: U.S. Department of Transportation.

d. Marine transport, including technology of maritime shipping and cargo handling in seaports.

e. Automobile transport, including problems of traffic safety.

Other areas of cooperation may be added by mutual agreement.

Article 3

Cooperation provided for in the preceding articles may take the following forms:

a. Exchange of scientists and specialists;

b. Exchange of scientific and technical information and documentation;

c. Convening of joint conferences, meetings and seminars; and

d. Joint planning, development and implementation of research programs and projects.

Other forms of cooperation may be added by mutual agreement.

Article 4

In furtherance of the aims of this agreement, the parties will, as appropriate, encourage, facilitate and monitor the development of cooperation and direct contacts between agencies, organizations and firms of the two countries, including the conclusions, as appropriate of implementing agreements for carrying out specific projects and programs under this agreement.

Article 5

1. For the implementation of this agreement, there shall be established a U.S.-U.S.S.R. joint committee on cooperation in transportation. This committee shall meet, as a rule, once a year, alternately in the United States and the Soviet Union, unless otherwise mutually agreed.

2. The joint committee shall take such action as is necessary for effective implementation of this agreement including, but not limited to, approval of specific projects and programs of cooperation; designation of appropriate agencies and organizations to be responsible for carrying out cooperative activities; and making recommendations, as appropriate, to the parties.

3. Each party shall designate its executive agent which will be responsible for carrying out this agreement. During the period between meetings of the joint committee, the executive agents shall maintain contact with each other, keep each other informed of activities and progress in implementing this agreement, and coordinate and supervise the development and implementation of cooperative activities conducted under this agreement.

Article 6

Nothing in this agreement shall be interpreted to prejudice other agreements between the parties or their respective rights and obligations under such other agreements.

Article 7

1. This agreement shall enter into force upon signature and shall remain in force for five years. It may be modified or extended by mutual agreement of the parties.

2. The termination of this agreement shall not affect the validity of implementing agreements concluded under this agreement between interested agencies, organizations and firms of the two countries.

Done at Washington, this 19th day of June, 1973, in duplicate, in the English and Russian languages, both texts being equally authentic.

APPENDIX H-1

Convention Between the United States of America and the Union of Soviet Socialist Republics on Matters of Taxation[1]

The President of the United States of America and the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics, desiring to avoid double taxation and to promote the development of economic, scientific, technical and cultural cooperation between both States, have appointed for this purpose as their respective plenipotentiaries:

The President of the United States of America:

George P. Shultz, Secretary of the Treasury of the USA; and

The Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics:

Nikolai Semenovich Patolichev, Minister of Foreign Trade of the USSR;

Who have agreed as follows:

Article I

1. The taxes which are the subject of this Convention are:

(a) In the case of the Union of Soviet Socialist Republics, taxes and dues provided for by the All-Union legislation;

(b) In the case of the United States of America, taxes and dues provided for by the Internal Revenue Code.

2. This Convention shall also apply to taxes and dues substantially similar to those covered by paragraph 1, which are imposed in addition to, or in place of, existing taxes and dues after the signature of this Convention.

Article II

In this Convention, the terms listed below shall have the following meaning:

1. "Soviet Union" or "USSR" means the Union of Soviet Socialist Republics and, when used in a geographical sense, means the territories of all the Union Republics. Such term also includes:

(a) The territorial sea thereof, and

(b) The seabed and subsoil of the submarine areas adjacent to the coast thereof, but beyond the territorial sea, over which the Soviet Union exercises sovereign rights, in accordance with international law, for the purpose of exploration for and exploitation of the natural resources of such areas. However, it is understood that such term includes such areas only to the extent that the person, property or activity with respect to which questions of taxation arise is connected with such exploration or exploitation.

[1] Source: U.S. Department of the Treasury.

2. "United States" or "USA" means the United States of America and, when used in a geographical sense, means the territories of all the states and of the District of Columbia. Such term also includes:

(a) The territorial sea thereof, and

(b) The seabed and subsoil of the submarine areas adjacent to the coast thereof, but beyond the territorial sea, over which the United States exercises sovereign rights, in accordance with international law, for the purpose of exploration for and exploitation of the natural resources of such areas. However, it is understood that such term includes such areas only to the extent that the person, property or activity with respect to which questions of taxation arise is connected with such exploration or exploitation.

3. "Resident of the Soviet Union" means:

(a) a legal entity or any other organization treated in the USSR as a legal entity for tax purposes which is created under the laws of the Soviet Union or any Union Republic and

(b) an individual resident in the Sovlet Union for purposes of its tax.

4. "Resident of the United States" means:

(a) a corporation or any other organization treated in the United States as a corporation for tax purposes which is created or organized under the laws of the United States or any state thereof or of the District of Columbia and

(b) an individual resident in the United States for purposes of its tax.

5. "Contracting State" means the United States or the Soviet Union, as the context requires.

6. The term "competent authorities" means:

(a) in the case of the Soviet Union, the Ministry of Finance;

(b) in the case of the United States, the Secretary of the Treasury or his delegate.

Article III

1. The following categories of income derived from sources within one Contracting State by a resident of the other Contracting State shall be subject to tax only in that other Contracting State:

(a) rentals, royalties, or other amounts paid as consideration for the use of or right to use literary, artistic, and scientific works, or for the use of copyrights of such works, as well as the rights to inventions (patents, author's certificates), industrial designs, processes or formulae, computer programs, trademarks, service marks, and other similar property or rights, or for industrial, commercial, or scientific equipment, or for knowledge, experience, or skill (know-how);

(b) gains derived from the sale or exchange of any such rights or property, whether or not the amounts realized on sale or exchange are contingent in whole or in part, on the extent and nature of use or disposition of such rights or property;

(c) gains from the sale or other disposition of property received as a result of inheritance or gift;

(d) income from the furnishing of engineering, architectural, designing, and other technical services in connection with an installation contract with a resident of the first Contracting State which are carried out in a period not exceeding 36 months at one location;

(e) income from the sale of goods or the supplying of services through a broker, general commission agent or other agent of independent

status, where such broker, general commission agent or other agent is acting in the ordinary course of his business;

(f) reinsurance premiums; and

(g) interest on credits, loans and other forms of indebtedness connected with the financing of trade between the USA and the USSR except where received by a resident of the other Contracting State from the conduct of a general banking business in the first Contracting State.

2. A Contracting State shall not attribute taxable income to the following activities conducted within that Contracting State by a resident of the other Contracting State:

(a) the purchase of goods or merchandise;

(b) the use of facilities for the purpose of storage or delivery of goods or merchandise belonging to the resident of the other Contracting State;

(c) the display of goods or merchandise belonging to the resident of the other Contracting State, and also the sale of such items on termination of their display;

(d) advertising by a resident of the other Contracting State, the collection or dissemination of information, or the conducting of scientific research, or similar activities, which have a preparatory or auxiliary character for the resident.

Article IV

1. Income from commercial activity derived in one Contracting State by a resident of the other Contracting State, shall be taxable in the first Contracting State only if it is derived by a representation.

2. The term "representation" means:

(a) with regard to income derived within the USSR, an office or representative bureau established in the USSR by a resident of the United States in accordance with the laws and regulations in force in the Soviet Union;

(b) with regard to income derived within the USA, an office or other place of business established in the USA by a resident of the Soviet Union in accordance with the laws and regulations in force in the United States.

3. In the determination of the profits of a representation, there shall be allowed as deductions from total income the expenses that are connected with the performance of its activity, including executive and general administrative expenses.

4. This article applies to income, other than income of an individual dealt with in Article VI, from the furnishing of tour performances and other public appearances.

5. The provisions of this article shall not affect the exemptions from taxes provided for by Articles III and V.

Article V

1. Income which a resident of the Soviet Union derives from the operation in international traffic of ships or aircraft registered in the USSR and gains which a resident of the USSR derives from the sale, exchange, or other disposition of ships or aircraft operated in inter-

national traffic by such resident and registered in the USSR shall be exempt from tax in the United States.

2. Income which a resident of the United States derives from operation in international traffic of ships or aircraft registered in the USA and gains which a resident of the USA derives from the sale, exchange, or other disposition of ships or aircraft operated in international traffic by such resident and registered in the USA shall be exempt from tax in the Soviet Union.

3. Remuneration derived by an individual from the performance of labor or personal services as an employee aboard ships or aircraft operated by one of the Contracting States or a resident thereof in international traffic shall be exempt from tax in the other Contracting State if such individual is a member of the regular complement of the ship or aircraft.

Article VI

1. *Special exemptions.*

Income derived by an individual who is a resident of one of the Contracting States shall be exempt from tax in the other Contracting State as provided in subparagraphs (a) through (f).

(a) *Government employees.*

(1) An individual receiving remuneration from government funds of the Contracting State of which the individual is a citizen for labor or personal services performed as an employee of governmental agencies or institutions of that Contracting State in the discharge of governmental functions shall not be subject to tax on such remuneration in that other Contracting State.

(2) Labor or personal services performed by a citizen of one of the Contracting States shall be treated by the other Contracting State as performed in the discharge of governmental functions if such labor or personal services would be treated under the internal laws of the first Contracting State as so performed. However, it is understood that persons engaged in commercial activity, such as employees or representatives of commercial organizations of the USA and employees or representatives of the foreign trade organizations of the USSR, shall not be considered in the USSR and USA respectively as engaged in the discharge of governmental functions.

(3) The provisions of this Convention shall not affect the fiscal privileges of diplomatic and consular officials under the general rules of international law or under special agreements.

(b) *Participants in programs of intergovernmental cooperation.*

An individual who is a resident of one of the Contracting States and who is temporarily present in the other Contracting State under an exchange program provided for by agreements between the governments of the Contracting States on cooperation in various fields of science and technology shall not be subject to tax in that other Contracting State on remuneration received from sources within either Contracting State.

(c) *Teachers and researchers.*

(1) An individual who is a resident of one of the Contracting States and who is temporarily present in the other Contracting State at the invitation of a governmental agency or institution or an educational or scientific research institution in that other Contracting State for the

primary purpose of teaching, engaging in research, or participating in scientific, technical or professional conferences shall not be subject to tax in that other Contracting State on his income from teaching or research or participating in such conferences.

(2) Subparagraph (1) shall not apply to income from reseach if such research is undertaken primarily for the benefit of a private person or commercial enterprise of the USA or a foreign trade organization of the USSR. However, subparagraph (1) shall apply in all cases where research is conducted on the basis of intergovernmental agreements on cooperation.

(d) *Students.*

An individual who is a resident of one of the Contracting States and who is temporarily present in the other Contracting State for the primary purpose of studying at an educational or scientific research institution or for the purpose of acquiring a profession or a specialty shall be exempt from taxes in the other Contracting State on a stipend, scholarship, or other substitute type of allowance, necessary to provide for ordinary living expenses.

(e) *Trainees and specialists.*

An individual who is a resident of one of the Contracting States, who is temporarily present in the other Contracting State for the primary purpose of acquiring technical, professional, or commercial experience or performing technical services, and who is an employee of, or under contract with, a resident of the first mentioned Contracting State, shall not be subject to tax in that other Contracting State on remuneration received from abroad. Also, such individual shall not be subject to tax in that other Contracting State on amounts received from sources within that other Contracting State which are necessary to provide for ordinary living expenses.

(f) *Duration of exemptions.*

The exemptions provided for under subparagraphs (b), (c), (d), and (e) of this article shall extend only for such period of time as is required to effectuate the purpose of the visit, but in no case shall such period of time exceed:

(1) One year in the case of subparagraphs (b) (Participants in programs of intergovernmental cooperation) and (e) (Trainees and specialists);

(2) Two years in the case of subparagraph (c) (Teachers and researchers); and

(3) Five years in the case of subparagraph (d) (Students).

If an individual qualifies for exemption under more than one of subparagraphs (b), (c), (d), and (e), the provisions of that subparagraph which is most favorable to him shall apply. However, in no case shall an individual have the cumulative benefits of subparagraphs (b), (c), (d), and (e) for more than five taxable years from the date of his arrival in the other Contracting State.

2. *General exemptions.*

Income derived by an individual who is a resident of one of the Contracting States from the performance of personal services in the other Contracting State, which is not exempt from tax in accordance with paragraph 1. of this article, may be taxed in that other Contracting State, but only if the individual is present in that other Contracting State for a period aggregating more than 183 days in the taxable year.

Article VII

This Convention shall not restrict the right of a Contracting State to tax a citizen of that Contracting State.

Article VIII

This Convention shall apply only to the taxation of income from activity conducted in a Contracting State in accordance with the laws and regulations in force in such Contracting State.

Article IX

If the income of a resident of one of the Contracting States is exempt from tax in the other Contracting State, in accordance with this Convention, such resident shall also be exempt from any tax which is at present imposed or which may be imposed subsequently in that Contracting State on the transaction giving rise to such income.

Article X

1. A citizen of one of the Contracting States who is a resident of the other Contracting State shall not be subjected in that other Contracting State to more burdensome taxes than a citizen of that other Contracting State who is a resident thereof carrying on the same activities.
2. A citizen of one of the Contracting States who is a resident of the other Contracting State or a representation established by a resident of the first Contracting State in the other Contracting State shall not be subjected in that other Contracting State to more burdensome taxes than are generally imposed in that State on citizens or representations of residents of third States carrying on the same activities. However, this provision shall not require a Contracting State to grant to citizens or representations of residents of the other Contracting State tax benefits granted by special agreements to citizens or representations of a third State.
3. The provisions of paragraphs 1. and 2. of this article shall apply to taxes of any kind imposed on the Federal or All-Union level.

Article XI

1. If a resident of one of the Contracting States considers that the action of one or both of the Contracting States results or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the laws of the Contracting States, present his case to the competent authorities of the Contracting State of which he is a resident or citizen. Should the claim be considered to have merit by the competent authorities of the Contracting State to which the claim is made, they shall endeavor to come to an agreement with the competent authorities of the other Contracting State with a view to the avoidance of taxation not in accordance with the provisions of this Convention.

2. In the event that such an agreement is reached the competent authorities of the Contracting States shall, as necessary, refund the excess amounts paid, allow tax exemptions, or levy taxes.

Article XII

The competent authorities of the Contracting States shall notify each other annually of amendments of the tax legislation referred to in paragraph 1. of Article I and of the adoption of taxes referred to in paragraph 2. of Article I by transmitting the texts of amendments or new statutes and notify each other of any material concerning the application of this Convention.

Article XIII

This Convention shall be subject to ratification and shall enter into force on the thirtieth day after the exchange of instruments of ratification. The instruments of ratification shall be exchanged at Moscow as soon as possible.

The provisions of this Convention shall, however, have effect for income derived on or after January 1 of the year following the year in which the instruments of ratification are exchanged.

Article XIV

1. This Convention shall remain in force for a period of three years after it takes effect and shall remain in force thereafter for an indefinite period. Either of the Contracting States may terminate this Convention at any time after three years from the date on which the Convention enters into force by giving notice of termination through diplomatic channels at least six months before the end of any calendar year. In such event, the Convention shall cease to have effect beginning on January 1 of the year following the year in which notice is given.

2. Notwithstanding the provisions of paragraph 1. of this article, upon prior notice to be given through diplomatic channels, the provisions of subparagraphs (e), (f), or (g) of paragraph 1. of Article III and the provisions of Article IX may be terminated separately by either Contracting State at any time after three years from the date on which this Convention enters into force. In such event such provisions shall cease to have effect beginning on January 1 of the year following the year in which notice is given.

In witness whereof, the plenipotentiaries of the two Contracting States have signed the present Convention and have affixed their seals thereto.

Done at Washington, this day of June, 1973, in duplicate, in the English and Russian languages, both texts being equally authentic.

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(For the President of the United States of America).

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(For the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics).

APPENDIX H-2

THE SECRETARY OF THE TREASURY,
Washington, D.C., June 20, 1973.

Mr. NIKOLAI S. PATOLICHEV,
Ministry of Foreign Trade, Union of Soviet Socialist Republics.

DEAR MR. MINISTER: In connection with the Income Tax Convention signed today, I should like to state our understanding of the agreement reached by the delegations of the United States of America and of the Union of Soviet Socialist Republics concerning the application of certain provisions of the Convention.

1. In connection with Article III, subparagraph 1.(e), it is our understanding that Soviet foreign trading organizations perform the functions of a broker or general commission agent for various Soviet industrial and other organizations in the purchase of goods and services from foreign suppliers. Accordingly, a representation of a United States commercial organization in the Soviet Union making sales to a Soviet foreign trading organization will be regarded as making sales through a broker or general commission agent

It is understood that a firm acting in the USA as a broker, general commission agent or other agent for a Soviet trade organization will not be considered to be of independent status if it is owned or otherwise controlled by an authorized organization of the Soviet Union.

It is also understood that if such a broker, general commission agent or other agent has no income other than commission income, such broker, general commission agent or other agent will be taxable only on such commission income.

2. In Article VI, subparagraphs 1.(d) and (e) provide exemption under certain circumstances of an amount "necessary to provide for ordinary living expenses." It is agreed that the exemption under subparagraph 1.(e) in any taxable year will not apply to any amount in excess of $10,000 or its equivalent in rubles, and that the exemption under subparagraph 1.(d) will generally apply to a lesser amount, to be determined in each specific case.

3. With respect to income mentioned in Article V, it is understood that each of the Contracting States will, if necessary, endeavor to secure exemption from taxes which may be imposed in Republics, states, or at the local level.

4. It is understood that both Contracting States continue to exercise tax jurisdiction over journalists and press, television, and radio correspondents on foreign assignment. Accordingly, it is agreed on the basis of reciprocity that subparagraph 1.(c)(1) of Article VI shall apply to such journalists and correspondents for a two-year period whether or not they are present in the other Contracting State at the invitation of a governmental agency or institution. It is understood that the exemption granted by the host country will apply only to compensation received from abroad.

5. It is understood that customs duties are not considered taxes for purposes of Article IX and paragraph 3 of Article X.

Please accept, Mr. Minister, assurances of my highest consideration.

Sincerely yours,

GEORGE P. SHULTZ.

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